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Ontario Royal commission inquiry into
labour disputes.

Hearings, v. 25 April, 1967
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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

5430

HEARINGS HELD AT
TORONTO

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Toronto, Ontario

1 IN THE MATTER OF The Public
2 Inquiries Act, R.S.O. 1960,
3 Ch. 323

4 - and -

5 IN THE MATTER OF an Inquiry
6 Into Labour Disputes

7 BEFORE: The Honourable Ivan C. Rand,
8 Commissioner, at 123 Edward
9 Street, Toronto, Ontario, on
10 Thursday, April the 20th, 1967

11 E. Marshall Pollock Counsel to the Commission
12 -----

13 APPEARANCES: -----
14 -----
15 -----

16 B.M.W. Paulin, Counsel) The Ontario
17 R.B. Carrigan, Chairman,) Federation of
18 Labour Relations Committee) Construction
19 Billie Field, President) Associations
20 E.R. Fenton, Member Labour)
21 Relations Committee)
22 Ken L. Croft, Executive)
23 Director)
24 John W. Tiefenback, London)
25 and District Association)
26 Edward Cauchi) Local 346 of The
27 Gunther Lenardt) International
28 Chemical Workers
29 Nethercut & Young Limited, Official Reporters, 48 York
30 Street, Toronto, Ontario. Per: B.E. Prouse

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Toronto, Ontario

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Thursday, April 20th, 1967

3

---On commencing at 10:00 a.m.

4

MR. POLLOCK: The Ontario Federation
of Construction Associations.

7

MR. PAULIN: My name is Paulin, Mr. Pollock.

0

MR. POLLOCK: Would you spell that
for the benefit of the reporter.

11

MR. PAULIN: I have a list of the appearances here, perhaps I may show them.

13

May I introduce, Mr. Commissioner, the gentlemen who are here for the Federation. On my right, Mr. Carrigan, who is Chairman of the Labour Relations Commission; Mr. Field, who is the President of the Federation; Mr. Fenton, who is a member of the Labour Relations Committee; Mr. Croft, who is the Executive Director of the Federation and Mr. Tiefenback, who is with the London and District Construction Association.

22

If I may, Mr. Commissioner, I would like to address a few remarks to you concerning this brief. May I say that, as indicated on the first page of the brief, it is presented on behalf of 30 trade and specialty associations in the construction industry, representing approximately 7000 construction companies. As the opening remark in the conclusion of this brief point out, the most serious, single problem in this industry is the

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1 unlawful strike and those strikes take place for
2 a variety of reasons and the cost of them to the
3 industry, and to the economy as a whole, is quite
4 enormous. If I may point out some of the features
5 that are involved in the unlawful strike, from the
6 economic point of view. If a new plant project is
7 delayed, the completion of it is delayed by an
8 unlawful strike of the employees, either of a
9 contractor or a sub-contractor, in a particular trade
10 and there is picketing of the project and work is
11 inevitably delayed and inevitably comes to a stop
12 and frequently the contractor, the general contractor
13 and the other employees on the project, because of
14 this delay, are required to carry on operations
15 over into the winter months and one then gets into
16 the situation of the extra expense of providing
17 heat and protecting the work from frost damage.

18 Where there is a delay of this kind, there is
19 inevitably a chain reaction of loss. The plant is
20 on
21 not really / schedule, the production of the goods
22 from the plant is delayed and orders for those goods
23 are cancelled because of late delivery and everyone
24 loses from the rank and file union member, who is
25 employed by the contractors on the project, up to
26 the customers even of the owner and the owner's
27 employees. The waste which is caused in this
28 industry by unlawful strikes, in our opinion, is
29 utterly scandalous.

30 One of the main causes or reasons
31 for unlawful strikes in this industry, is the case

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1 of the jurisdictional dispute. Now, of course,
2 this is an inter-union squabble and the constitutions
3 of most of the unions in the industry contain a
4 very broad and general description of the work over
5 which this union may claim jurisdiction, and the
6 claims by one union in this industry, frequently
7 overlap the claims of another union. You may have,
8 for example, two or more unions who work with metal,
9 whether they are pipe fitters or ironworkers, or
10 whatever, and they frequently overlap and we sometimes
11 find rivalry between trade unions and this field
12 of jurisdictional disputes, which amounts to
13 something which can only be described as bitterness.
14 These, of course, are craft unions and they are
15 extremely jealous over what they call the right to
16 do certain work and when one analyses that, really
17 they say that, "We own this work".

18 Now, employers in the industry are
19 acutely conscious of these claims and they seek to
20 avoid the dispute by one of several devices. For
21 example, it might be suggested where the jurisdictional
22 lines are quite blurred, as between two unions, it
23 might be suggested, "Well, we will use 60 per cent
24 of the members of this union and 40 per cent of the
25 members of the other", and sometimes when that
26 doesn't work, the employer may say to the unions,
27 "Then you work out the composition of the crew
28 yourself and we will agree to it". But, all too
29 often, it is impossible for an employer to make
30 a work assignment in such a way that a dispute over

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1 its ownership will not arise and when two or more
2 unions do claim jurisdiction over the work, that
3 is over the entire work, then there is really no
4 dispute or there is really no way to avoid a
5 jurisdictional dispute. And if I may say, sir,
6 when I say "claim ownership over the work", on
7 a large project, work orders are received as the
8 work goes along from the owner, and the work order
9 that is received, which is pursuant to the contract,
10 between the contractor and the owner, the work
11 order may be for a small segment of the work or for
12 a segment of the work that might take two or three
13 weeks to complete. Now, that work must be done and
14 the employer then must assign the work to one of the
15 two unions who is claiming it and perhaps the
16 contractor may go on his past experience and put
17 a competent crew on the job, but it frequently
18 happens that the members of the union who are
19 unsuccessfully claiming all of the work, won't agree
20 to an arrangement of this kind and the members are
21 then instructed by the stewards or the local unions
22 to stop work and protest. They dare not refuse
23 to do that because they know that they will be
24 subject to fines under the union's constitution
25 or to expulsion from the union or to have their
26 membership suspended. This is notwithstanding the
27 recent amendment to the Labour Relations Act, which
28 prohibits any action being taken against the members
29 of a union for refusing to engage in an unlawful
30 strike. It still goes on and it goes on in the guise

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1 of the constitution under some general wording of
2 the clause, I suppose much in the same way as during
3 the late war when, in the army, someone had done
4 something and the authorities didn't know quite
5 what to charge him with, they would charge him
6 with prejudice to the conduct of good order and
7 military discipline. These general clauses in
8 the constitution are used.

9 Now, sometimes the project will be
10 picketed and all work then comes to a stop. But
11 the leaders of these unions, they now know that
12 picketing in support of an unlawful strike, will
13 usually be enjoined by the court and since they
14 consider that an injunction order really causes
15 a great loss of face, that form of picketing in
16 support of that strike is not now as common as it
17 used to be in this industry. But, instead the
18 members of the union are told not to work for this
19 particular employer and not many of them do.

20 THE COMMISSIONER: What affect does
21 that have on the job?

22 MR. PAULIN: Well, if there is no
23 picketing, sir, they will usually continue working.
24 But you will appreciate, I am sure, that this can
25 only continue for a while.

26 THE COMMISSIONER: Oh, yes, I quite
27 agree.

28 MR. PAULIN: Because they have to
29 work around the work which is being done and
30 eventually this patchwork type of construction must

1 stop; it must physically stop.

2 MR. POLLOCK: I must just ask one
3 question, Mr. Paulin, about the choice of - the
4 contractors choice of one union to do the work as
5 opposed to another, whether there is any factor of
6 cost involved in that, whether there is a differential
7 between one group of workers, carpenters, as opposed
8 to the ---

9 MR. PAULIN: Millwright.

10 MR. POLLOCK: Yes, millwright.

11 MR. PAULIN: Or the ironworker as
12 opposed to the plumber or pipe fitter.

13 MR. POLLOCK: Yes, or one of those,
14 the carpenter is putting it up, putting up acoustic
15 tile, or a sheet metalworker is putting up acoustic
16 tile.

17 MR. PAULIN: Well, frequently, there
18 may be a rate between these two trades amounting to
19 a few cents an hour, but this is, with most of the
20 contractors with whom I have had experience in this
21 industry, this is not a factor at all and their main
22 concern is to get the work done and to have it
23 assigned so as to avoid this type of thing and where
24 you have had rivalry between two unions in the past
25 on one job and you go to the next one and then one
26 of the rival unions may very well, as a matter of
27 pique will get to the work and I never remember a
28 case where the contractor was responsible. I am not
29 saying there haven't been any, but I never remember
30 a case when the contractor had provoked or caused a

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1 jurisdictional dispute because he was trying to save
2 10 cents an hour.

3 One of the cases referred to in the
4 index to the brief, involved a dispute between two
5 unions and the Labour Relations Board made an inquiry
6 and found out that the union which had been awarded
7 the work, the workmen of that union were being paid
8 something like 12 cents an hour more than the union
9 which was claiming it.

10 One of the commentaries on our time
11 is that there is an acute shortage of skilled
12 tradesmen in this industry and if a jurisdictional
13 dispute appears or an unlawful strike is called, and
14 the members of that union leave the project, then
15 they don't suffer economically, there is no problem
16 of strike because they can readily get employment
17 anywhere and the industry, I suppose, is suffering,
18 and suffering rather heavy damages from what is
19 really a very prosperous economy, which is another
20 commentary on our times. Of course, when work of
21 this kind does stop, where one loses all the
22 carpenters or millwrights, or whatever the trade may
23 be, it is quite unthinkable to bring non-union
24 workmen in to complete the work. You just don't
25 take non-union workmen onto a project which is known
26 as a union job. It is almost - it is certainly a
27 very strong custom in the industry, not to do this
28 and there is really no practical alternative to
29 have the work of the striking employees done with
30 others because where the jurisdictional lines are

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1 clear, then none of the other unions who perhaps do
2 have skills to do some of the work, will become
3 involved in it to any great degree because of, perhaps,
4 fear of retaliation of the other union on the next
5 job.

6 Now, typical examples of jurisdictional
7 disputes are found in the Federation's brief.
8 Commencing at page 16, for example, there is the
9 difficulty that was encountered at the Toronto-
10 Dominion project.

11 THE COMMISSIONER: You say page 15?

12 MR. PAULIN: Commencing at page 16,
13 sir.

14 MR. POLLOCK: It was a difficult
15 problem. They resolved it twice.

16 MR. PAULIN: It was a difficult
17 problem, yes.

18 MR. POLLOCK: With different answers.

19 MR. PAULIN: I think they resolved
20 the question three times and then the first stuck.
21 First of all, there was the decision of the Labour
22 Relations Board and then the decision of the National
23 Joint Board and then finally, in desperation, the
24 contractor left it up to the unions to settle it
25 themselves and fortunately they were able to do so.

26 There is another example in Exhibit
27 10(c), which is towards the back of the brief, at
28 page 4. This was a case of a rather classic dispute
29 between two trade unions on a project. This is
30 Strike No. 4; it is on page 4 of Exhibit 10(c).

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1 This had to do with the installation of some pieces
2 of heavy equipment and this was a case where the
3 owner had taken over the work from a contractor
4 on this particular piece of work and the owner was
5 doing the work with its own forces. There was again
6 a dispute between two unions as to which of them
7 was to do this work and there was a decision made
8 by the Jurisdictional Disputes Commission, which
9 was ignored and there was an injunction order about
10 interfering with the employees which had been ignored.
11 In fact, that was a judgment for an injunction
12 giving a consent, which was subsequently ignored,
13 and in the result, the contractor lost a substantial
14 piece of the mechanical work in a very large building
15 and suffered a great deal of damages. I will be
16 dealing with that part of the brief, perhaps, later.

17 My point is, that in both of these
18 cases, both of these two examples I have given you,
19 the order which had been made by the Jurisdictional
20 Disputes Commission, as it then was under the Labour
21 Relations Act, both the orders of that Commission
22 were ignored by the unions.

23 THE COMMISSIONER: What follows then,
24 within the union? Is there any provision? Are
25 they bound by the constitution to follow that
26 decision?

27 MR. PAULIN: Well, they may not be, sir.

28 THE COMMISSIONER: If they are
29 different organizations, I suppose they ignore it.

30 MR. PAULIN: That is true and their

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1 constitutions may conflict with the other.

2 THE COMMISSIONER: Have you two
3 tribunals to decide these questions in Canada?

4 MR. PAULIN: No, we have not, sir.
5 We are talking, of course now, in Ontario and there
6 are the provisions under section 66 of the Ontario
7 Labour Relations Act.

8 THE COMMISSIONER: Yes.

9 MR. PAULIN: Now, there is also
10 a provision in collective agreements where unions
11 in this industry frequently insist upon it and that
12 is any jurisdictional dispute be referred to a
13 body in Washington known as the National
14 Joint Board.

15 THE COMMISSIONER: I am familiar
16 with that, but those are the two?

17 MR. PAULIN: Those are the two, sir.

18 THE COMMISSIONER: Yes. The other,
19 the original one in Ontario, what was it called?

20 MR. PAULIN: It was called the
21 Jurisdictional Disputes Commission.

22 THE COMMISSIONER: That has been
23 superceded.

24 MR. PAULIN: That has been superceded.

25 THE COMMISSIONER: Their jurisdiction
26 is now vested in the Board.

27 MR. PAULIN: Yes.

28 THE COMMISSIONER: There is just the
29 Ontario and the American.

30 MR. PAULIN: Yes. One of the difficulties

1 is this.

2 THE COMMISSIONER: Well, that's not
3 completely the whole picture because there is some
4 attempt to solve these problems within the Canadian
5 Labour Congress as well.

6 MR. PAULIN: Yes.

7 THE COMMISSIONER: That isn't legally
8 set up, I mean it depends upon the unions themselves.

9 MR. PAULIN: Yes, it does.

10 THE COMMISSIONER: I am dealing with
11 statutory created tribunals.

12 MR. POLLOCK: Well, the Washington
13 one is not the statutory one.

14 MR. PAULIN: The Washington one is not.

15 THE COMMISSIONER: That may be
16 that the constitutional provisions direct them to
17 accept that as the decision, doesn't it?

18 MR. PAULIN: Well, I cannot say, sir,
19 because I am not that familiar with the constitutions
20 of the unions in this industry. I doubt that this
21 is so. I think that this is probably a matter of
22 merely a policy of the unions themselves rather than
23 a condition of their constitution and the constitution
24 is open by stating in broad, general terms, who, in
25 which union, has jurisdictional control.

26 MR. POLLOCK: I think it is - if not
27 conditions - one of the terms of affiliation under
28 the American Federation of Labour.

29 MR. PAULIN: Yes, I believe that is so.

30 MR. POLLOCK: These types of

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1 jurisdictional disputes refer to this organization.

2 MR. PAULIN: That is true.

3 MR. POLLOCK: So, if these are
4 affiliates of the A.F. of L., they are not within
5 their own constitution but by subscribing and
6 affiliating themselves to the A.F. of L., they have
7 agreed in some way to accept that decision.

8 MR. PAULIN: Yes.

9 THE COMMISSIONER: That is the
10 decision of their union with A.F. of L.

11 MR. PAULIN: An affiliation with.

12 THE COMMISSIONER: Yes, that's what
13 I mean, exactly.

14 MR. PAULIN: Now we saw, in the
15 comments in the brief concerning the Toronto-Dominion
16 project, that the decision of the Ontario Jurisdictional
17 Disputes Commission was to award this work 60 per
18 cent to one union and 40 per cent to another and
19 it was then that one of the unions who had claimed
20 all of the work, walked off the job and then
21 applied to the National Joint Board in Washington
22 for a settlement and was awarded all of the work
23 by the National Joint Board. And then you had the
24 strange situation where the domestic form has
25 made a decision of the work and the form in Washington
26 had then turned around and said, "No, you may have
27 all of it". Now, this, of course, is an intolerable
28 situation for an employer to find himself in and
29 I think perhaps that it arose on this particular
30 case, as the brief shows, over the fact that what

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1 was done in the Commission in Ontario was
2 representative of the practice and the custom in
3 this particular area in Ontario and the decision
4 of the National Joint Board in Washington, on the
5 other hand, reflected the custom and the practice
6 in the industry in the United States.

7 THE COMMISSIONER: Is there any
8 incompatibility between the two? Does the Ontario
9 provision - is it mandatory, or does it allow
10 for agreement?

11 MR. PAULIN: It allows for agreement,
12 unfortunately, and this is one of the points that
13 I will be touching on a bit later. In other cases
14 you may have the situation where the National or
15 the International union has gone to the International
16 Joint Board for a decision in a particular situation
17 and the Joint Board has issued a decision and the
18 employers are aware of it up here and they are
19 prepared to follow it and they go ahead and they
20 award work assignments in accordance with that
21 particular decision. But the local unions in
22 Canada, with whom there are collective agreements
23 with employers, refuse sometimes to be bound by
24 the decision of the National Joint Board because they
25 say that they were not involved in the proceedings
26 in Washington and they don't approve of the results.

27 THE COMMISSIONER: Well, now is
28 there anything in the terms of affiliation that
29 would enable the Board in Washington to act on that
30 fact?

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1 Board are not enforceable in Canada and they have
2 not been made enforceable by the unions concerned.

3 THE COMMISSIONER: Well, you deal
4 with the question of, if it is desirable to continue
5 the international relation, but the Ontario law
6 might accept a decision there and make it the order
7 of the Board here.

8 MR. PAULIN: Well, the Ontario Board
9 has frequently been guided by the decisions of
10 the National Joint Board and - I think it is almost
11 fair to say, and my clients will correct me if I
not
12 am wrong - but they will apply a decision of the
13 National Joint Board to a jurisdictional problem
14 unless it runs counter to the practice in Ontario
15 and the industry in Canada, generally.

16 THE COMMISSIONER: Well, then, the
17 only question is that the compulsion imposed by
18 virtue of Ontario law might cause the union to
19 violate the terms of its federation and what might
20 result from that?

21 MR. PAULIN: I don't think there would
22 be any results, sir, if the corporation adopted a
23 by-law or entered into some agreement with another
24 corporation which was counter to the law of the
25 jurisdiction which it carried on business. I think
26 it is that simple.

27 THE COMMISSIONER: I agree legally,
28 but between the affiliated union and the main union,
29 the question is really this: Is the international
30 association desirable, or should it so far be disrupted?

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1 MR. PAULIN: I don't suggest that
2 it is a disruption, sir. I think all it is going
3 to do is require a small adjustment within the
4 organization.

5 THE COMMISSIONER: I know, but that
6 is in a form - it breaks the one term of the
7 affiliation.

8 MR. PAULIN: Well, only by statute.

9 THE COMMISSIONER: That is true.

10 MR. PAULIN: I can't say, with
11 respect, sir, that that's a disruption of the
12 association. All it requires ---

13 THE COMMISSIONER: That would depend
14 on what the headquarters in Washington look upon it.

15 MR. PAULIN: That is true, but if I
16 may draw your attention, Mr. Commission, to another
17 aspect of these international affiliations, we have
18 in the United States, even again the constitutional
19 jurisdiction, of course, is so different than ours.
20 But, in any event, in the United States there is
21 no conciliation for strike and the international
22 unions have been able to live with that. There are
23 no contracts, no work ----- and they realize
24 this is not a practice here.

25 THE COMMISSIONER: No, but they really
26 wouldn't take any action in relation to the affiliated
27 union or the action of the latter union if it was
28 dictated by legislation here.

29 MR. PAULIN: No, certainly. The
30 section of the Labour Relations Act, or the sub-section

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1 MR. PAULIN: Well this, sir, is
2 perhaps controlled within the unions themselves.

3 THE COMMISSIONER: Yes, it is.

4 MR. PAULIN: And I am going to touch
5 on that point too.

6 These items which I have discussed ,
7 and perhaps I ought to say here,that in this industry
8 there is a great effort both by unions and the
9 employers as well, to be aware of the previous
10 decisions of the National Joint Board of the old
11 Jurisdictional Disputes Commission and of the
12 practices and customs in industries and areas and
13 there are rather voluminous publications which are
14 used and referred to much more frequently than
15 the collective agreement which tries to define
16 the jurisdiction over certain types of work and
17 these are followed carefully and I should think
18 that they get a great deal more attention than
19 the collective agreement between the parties. But
20 the unhappy and very costly experiences which I
21 have mentioned and which I described in the brief
22 in our submission, are compelling reasons for a
23 change in the law which would require jurisdictional
24 disputes which arise in Ontario to be decided only
25 in Ontario. The use of a forum in the United
26 States National Joint Board, is something which the
27 unions have bargained for and gotten into their
28 collective agreements and the local unions that
29 have done so as well. But this has simply not
30 worked because the decisions of the National Joint

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1 which, in our view, ought to be repealed, is sub-
2 section 8 of section 66 which simply says that no
3 complaint may be made under section 66. That is on
4 page 38.

5 THE COMMISSIONER: Which sub-section?

6 MR. PAULIN: Sub-section 8 on page
7 38; if I may paraphrase it: No complaint under
8 this section may be made by anyone who has entered
9 into a collective agreement that contains a provision
10 requiring a reference of any difference between them
11 arising out of work assignment to the tribunal
12 with respect to them, has respect to any other
13 assignment that can be assigned under the collective
14 agreement. And it goes on to say:

15 "If such trade union or employer
16 should do or sustain to do
17 anything, then require it by
18 such tribunal."

19 But it says that no complaint may be made under the
20 section 66. Now this, of course, deals directly
21 with the decisions of the National Joint Board.

22 THE COMMISSIONER: Is that sub-
23 section in the original provision?

24 MR. PAULIN: My recollection, sir,
25 was that it was not. This section was overhauled
26 when the former Jurisdictional Disputes - this was
27 reenacted in 1966, 76.

28 THE COMMISSIONER: I was just
29 wondering, is that section, sub-section (a), before
30 the Goldenberg recommendation?

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1 MR. PAULIN: No, sir, it is my
2 recommendation that it is not - this is new, I believe.

3 MR. CARRIGAN: It was originated
4 out of 64 just a year ago.

5 MR. PAULIN: Now, I wish to emphasize
6 that this type, this jurisdictional dispute problem
7 is entirely an inter-union matter and, unfortunately,
8 because of the irresponsibility and perhaps the
9 greed of some trade unions in this industry, there
10 are work stoppages in which millions and millions
11 of dollars are squandered every year.

12 THE COMMISSIONER: Well, I suppose
13 that arose over the desire of each union to have
14 as much work as possible.

15 MR. PAULIN: Yes, this is true and
16 one union not recognizing, when they plan an
17 expansion drive, even the jurisdictional claims of
18 other trade unions, of rival unions, perhaps, which
19 have been recognized by custom for many years.

20 MR. POLLOCK: You say that it is
21 entirely a matter of an internal union problem. Well,
22 not in all cases.

23 MR. PAULIN: Inter-union.

24 MR. POLLOCK: Inter-union.

25 MR. PAULIN: It is not in all cases.
26 The example I can think of is, you have a type of
27 work that was within the jurisdiction of three unions.

28 MR. POLLOCK: And on your job you
29 employ two.

30 MR. PAULIN: Under the constitutions

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1 of them.

2 MR. POLLOCK: Yes.

3 MR. PAULIN: Yes, they overlap.

4 MR. POLLOCK: But they would do it
5 on another job. If they were the only ones, they
6 would do it.

7 MR. PAULIN: Yes.

8 MR. POLLOCK: You have two of those
9 people, two of those unions working for you on
10 your project and they are fighting it out between
11 themselves and the third party, who is not an
12 employee, or is not employed on your job, doesn't
13 have the say in this, does he?

14 MR. PAULIN: No, there is no
15 contractual relationship between the employer, we
16 will say, and that third trade union at the project
17 that you are talking about and in your hypothetical
18 situation, I still don't see any difference over
19 the fact that it may be entirely an inter-union
20 matter.

21 MR. POLLOCK: No, well it is inter-
22 union in the sense of all the unions.

23 MR. PAULIN: I disagree. It is
24 inter-union in some of the unions.

25 MR. POLLOCK: Well, the craft unions.

26 MR. PAULIN: The craft unions.

27 MR. POLLOCK: They are disputing
28 this particular jurisdiction.

29 MR. PAULIN: Yes.

30 MR. POLLOCK: And the determination of

1 the jurisdiction is, in many cases, along historic
2 lines.

3 MR. PAULIN: That's right.

4 MR. POLLOCK: And when we get into
5 interpreting the jurisdiction, when we look back
6 100 years to the British North America Act, and
7 find out what they were trying to think at that
8 time, project it forward, you have the same problem
9 in this case, that new things are coming up and
10 everyone is saying, "Those are ours because back
11 along the lines, somebody else did something of a
12 similar nature".

13 MR. PAULIN: That's true.

14 MR. POLLOCK: Now is there any
15 possibility to head these off before these things
16 arise by having some kind of a meeting or conference
17 of all unions and all construction employers and
18 coming to some accord as to who does this and who
19 does that?

20 MR. PAULIN: Employers try to do
21 that by having what they call pre-job conferences
22 and they get all of the representatives of all of
23 the unions of all the trades who would be employed
24 on the job in to talk to the employer before the
25 work even commences, as soon as the contract is
26 awarded. And they discuss the nature of the work
27 and these are areas which are discussed by the
28 employer and the pre-job contracts which the employer
29 calls before things begin.

30 MR. POLLOCK: That's done on a job

1 basis. It is not done in the entire construction
2 industry in the Province of Ontario?

3 MR. PAULIN: No. You will understand,
4 sir, that the almost incredible complexity of the
5 situation, and the different sets of circumstances,
6 they are virtually infinite in their variety,
7 virtually infinite.

8 MR. POLLOCK: Well, then perhaps
9 if you got all the people who were interested in
10 roofing tile and ceiling tile together at one time
11 and they could strike some accord between the three
12 of them as to who would do this part and who would
13 do that part or who would want to have this
14 jurisdiction and who would want to have that
15 jurisdiction, and possibly they could split it up
16 in three ways, then it would restrict, I agree, the
17 employer in his choice of employees when he came to
18 that section. He would have to say, "All right, we
19 have to take on some of the people in the other
20 union". If you want to reduce the cost, you would
21 have to spend it some other way.

22 MR. PAULIN: I agree with you, that
23 is very desirable, but I am afraid that it is about
24 as practical as Plato's ideas in the republic,
25 because if people were all perfect people, then
26 this is something that would happen. It has not
27 been our experience that this has worked out.

28 MR. POLLOCK: Well, you haven't
29 tried it, have you?

30 MR. PAULIN: Oh, certainly.

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1 THE COMMISSIONER: Well, if you can
2 resolve it after it happens, why can't you resolve
3 it before it happens. You know that it has happened
4 on one project before. Can't you see ahead and
5 see what is going to happen on the next project as
6 well?

7 MR. PAULIN: What you are saying
8 is the fact that you are presupposing, Mr. Pollock,
9 that the members or representatives of these unions
10 are going to be able to agree. But the unfortunate
11 facts are they do not agree and an employer is then
12 in a situation where an important segment of the work
13 is held up. He must, to meet his obligation to the
14 owner, go ahead and assign the work so that he makes
15 what he thinks, if the unions disagree, is the fairest
16 and most equitable assignment possible, having
17 regard to all of these considerations you have
18 mentioned. And then he knows, or he feels that
19 all the members of one trade, or perhaps two trades,
20 will walk off the job in protest over this work
21 assignment. And that happens.

22 MR. POLLOCK: Does it also happen
23 after the Jurisdictional Disputes Commission has
24 made that award, some people won't come to work?

25 MR. PAULIN: Yes.

26 MR. POLLOCK: What is the answer?

27 MR. PAULIN: The answer, I think,
28 lies in the recent amendments in which a new section,
29 section 66 in the Labour Relations Act, for instance
30 sub-section - we have had very little experience under

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1 this legislation yet, because it is very new, but
2 we are willing to give it a try, except for sub-
3 section 8. It says the Board may, on an interim
4 order, or at any time after the making of an interim
5 order, direct any person, employee or trade union,
6 to cease and desist from doing anything intendent
7 or likely to have interfere with the terms of an
8 interim order or direction respecting the assignment
9 and the Board shall file in the office of the
10 Registrar of the Supreme Court, a copy of the interim
11 order or direction made under the section exclusive
12 of the reasons therefor, whereupon the interim order
13 or direction shall be entered in the same way as
14 a judgment or order of that court and presumably
15 is enforceable as such. It then becomes a judgment
16 or order of the court and I have tried to get
17 Professor Finkleman, who is Chairman of the Board,
18 to tell me what he thought those two sub-sections
19 meant and he declined to do so.

20 THE COMMISSIONER: You assume that
21 a violation of that order would lead to contempt?

22 MR. PAULIN: Yes, I suspect so, sir.

23 MR. POLLOCK: So that if that is
24 your position, then these people will be prohibited
25 from leaving the work and going to work somewhere else?

26 MR. PAULIN: No, that is not entirely
27 so. I am just saying this to you: That I think
28 it would probably operate to prevent the continuation
29 of an unlawful strike.

30 MR. POLLOCK: What if they just

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1 quit and go somewhere else, which was what you told
2 us they did in any event?

3 MR. PAULIN: Well, if they quit in
4 concert, or in accordance with the common understanding,
5 then that is an unlawful strike and a question of
6 law is whether or not it is unlawful.

7 THE COMMISSIONER: Well, can't they
8 quit the work and say, "We are through. We don't
9 claim continued employee relations at all. We
10 sever completely all contractual relation with
11 this job"?

12 MR. PAULIN: Well, sir, when 150
13 men do that in the space of a half an hour in one
14 morning, then we know that this is not what you call
15 a spontaneous demonstration, partly because they
16 are told to leave.

17 MR. POLLOCK: But it is not a
18 demonstration. It hasn't got inherent in it the
19 same quality that a strike has. They are saying
20 that they want to quit and they are going home.

21 MR. PAULIN: With respect, Mr.
22 Pollock, I think you are perhaps not considering
23 the definition of a strike in the Labour Relations
24 Act and this is a strike, clearly a strike, in
25 accordance with the authorities. I think it is
26 quite clear that that is a strike and it is an
27 unlawful strike.

28 THE COMMISSIONER: Won't it depend
29 upon the purpose. If they look to return or
30 anything, then I agree, there is a strike. But if they

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1 don't, if they turn their backs completely and say,
2 "We are through and we have no relation at all",
3 really, you are compelling them to work in the
4 absence of an obligation.

5 MR. PAULIN: Well, now, we must look
6 at the collective agreement and again, they are at
7 the back of this agreement in Exhibit 10(c), at
8 page 4. I think perhaps going back a bit earlier
9 in the Exhibit ---

10 THE COMMISSIONER: Well, they may
11 violate the agreement, I agree, but we don't in our
12 laws, compel the man affirmatively to work.

13 MR. PAULIN: But we do, sir, compel
14 an employer affirmatively to take back men that
15 he doesn't want to have work for him.

16 THE COMMISSIONER: That may be.

17 MR. PAULIN: This has become a
18 unilateral thing.

19 THE COMMISSIONER: That is because
20 it has been continued by statute.

21 MR. PAULIN: Yes, I think it is
22 bilateral, rather than unilateral.

23 THE COMMISSIONER: Well, I think
24 you would have difficulty in persuading a court
25 that that was so.

26 MR. PAULIN: Of course, the court
27 wouldn't dream of making an order like that in any
28 event. The court would never dream of making two
29 persons associate.

30 THE COMMISSIONER: Well, I understand

1 from your parent submission is that this contempt
2 order is ordering the men back to work.

3 MR. PAULIN: Yes, there have been
4 injunction orders issued in this jurisdiction
5 enjoining a strike.

6 THE COMMISSIONER: Well, that
7 doesn't prevent them saying, "We are not on strike.
8 We are through and don't look upon us".

9 MR. PAULIN: That is true, but
10 depending, as you say, upon circumstances.

11 THE COMMISSIONER: Yes, the
12 interpretation of the purpose, I would say.

13 MR. PAULIN: Yes. Now, if it is
14 for the purpose of defying an order which has been
15 made by the Labour Relations Board, then I don't
16 think that is a proper purpose.

17 THE COMMISSIONER: No, it would
18 simply be defying that because they continue in
19 the sense of defiance.

20 MR. PAULIN: Yes, but then we come
21 to this, though. We come to this which has
22 happened and, unfortunately, it has happened, it
23 arises out of what amounts to the hiring, our
24 practice of unions in this industry where these
25 are closed shops. Frequently, sir, I must say
26 that the treatment afforded to employees in this
27 industry are most uniform from one union employer
28 to another union employer. There may be minor
29 irritations from one employer to another employer
30 and small advantages here that don't approve there.

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1 But when all employees walk off the job within, I
2 would say, the space of half an hour, and the
3 employer then contacts the local union business
4 agent, the hiring hall office, and asks for more
5 people, and if the person there tells them blindly
6 that there is no member of that local who cares
7 to go and work for this employer, then it is just
8 stretching one's credibility to suggest that this
9 employer is such an unfair employer and the
10 working conditions are so disgraceful that no
11 workman will work for them. It is something like
12 the harassment one finds sometimes, again as
13 referred to in the brief, under the guise of
14 safety.

15 THE COMMISSIONER: I agree with
16 everything you say but suppose those people, you
17 say, were going over the line with a big job in
18 New York and they were engaged there and they go.
19 Surely you wouldn't say that they haven't quit the
20 job.

21 MR. PAULIN: In a circumstance
22 like that, I would have great difficulty making
23 an argument of that kind.

24 THE COMMISSIONER: That is all I
25 have in mind, that such a thing is possible.

26 MR. PAULIN: Certainly, sir, certainly.

27 MR. POLLOCK: You are probably more
28 familiar with this case than I am - the case that
29 recently arose in Winnipeg in the construction
30 industry on the same basis is going to the Supreme

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1 Court of Canada. Do you know the one about which
2 I am talking, in which an order was made directing
3 these people to go back to work?

4 MR. PAULIN: Yes.

5 MR. POLLOCK: Is that the kind of
6 situation you contemplate?

7 MR. PAULIN: I am not that familiar
8 with case, Mr. Pollock. I know, generally, what
9 the facts are but I am not aware, again, precisely
10 of what the facts are, although I do say that I
11 know that there have been injunction orders given
12 in the court in Ontario enjoining strikes.

13 THE COMMISSIONER: I think there
14 is one support for your position, in the case of
15 school teachers in Quebec.

16 MR. PAULIN: Yes, this is true.

17 THE COMMISSIONER: This is extra-
18 ordinary.

19 MR. POLLOCK: But the injunction
20 against strikes wouldn't prohibit people from giving
21 notice and quitting.

22 MR. PAULIN: Bona fide giving
23 notice and quitting and going to work elsewhere, no.
24 They are not bound servants, not by any stretch
25 of the imagination. We are only directing our
26 brief and our argument to the case where what is done
27 in concert or in accordance with the common understand-
28 ing for the purpose of forcing the employer to do some-
29 thing or not to do something with a perfectly lawful
30 right to do.

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1 THE COMMISSIONER: Colourable quitting.

2 MR. PAULIN: Colourable quitting.

3 MR. CARRIGAN: I would like to point out
4 that under no circumstances are we allowed to hire
5 under the union, because of the agreement they spell
6 out in contracting us to supply men, we also

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1 contracted them to draw up the terms of work under
2 which they are being employed. Their coffee at
3 certain times, clauses as to what equipment they
4 will be given by the company, their travel allowance
5 to and from the job. All of these have evolved
6 over a period of years. They have spelled in
7 extreme detail, if there is any point of conflict
8 out of that agreement, their provisions for conciliation -
9 they have frequently a joint conference board.
10 So that, therefore, we are binding each other to
11 hire and to supply men on that job and there are
12 recourses to analyse any valid agreement.

13 THE COMMISSIONER: I agree, but
14 suppose the members of the union defy the orders?

15 MR. CARRIGAN: Then we would
16 contend that that firm is operating under the terms
17 of the collective agreement and to prove that they
18 are not-and if they are operating under the agreement
19 it must be upheld that the union then is bound to
20 supply men for that project.

21 THE COMMISSIONER: Well, yes, but
22 if the men won't go, what are you going to do?

23 MR. CARRIGAN: Then it needs further
24 analysis.

25 THE COMMISSIONER: Pardon?

26 MR. CARRIGAN: It would need further
27 analysis.

28 THE COMMISSIONER: Yes, I agree. It
29 is a difficulty.

30 MR. CARRIGAN: Well, Mr. Paulin's point

1 of having joint conferences ahead of time... As
2 recently as a few days ago, this was done on a job
3 and it must be done this weekend. To my knowledge,
4 three conflicting unions were drawn into the
5 situation and one of them took a very arbitrary
6 stand in contradiction to what his international
7 union agreement states. He wanted to claim all
8 of the work and so instructed his steward that if
9 it was attempted to split the work up, that their
10 men were to walk off. Because of his arbitrary
11 action, one of the other unions involved took the
12 same stand, "If they think they are going to claim
13 it, we will walk out". Now this work must be done
14 and in the absence of the agreement, this particular
15 firm made an assignment based on past practice,
16 based on an agreement signed in 1958. This work
17 must be done and vigorous action will be taken
18 against anyone who violates it. If it weren't
19 necessary to do this, if there was no question
20 about what the settlement was going to be, these
21 people wouldn't take these arbitrary stands whatsoever.

22 MR. POLLOCK: Let me clarify my
23 position the way you understand it. What I was
24 suggesting was, before, under the sanction of
25 government or order or board or something, convened
26 in some kind of a conference together, a continuation
27 nature if necessary, to determine all of the
28 jurisdictional issues in which everybody has a
29 decision or a vote or an opportunity to discuss
30 the matter and then a board will decide. It could

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1 be the same Jurisdictional Disputes Commission that
2 was going to decide it eventually anyway. These
3 are the rules. There is a guideline when you are
4 working on construction projects. This union will
5 have the jurisdiction over these narrow things.
6 They do that in other jurisdictions. They do that
7 in other areas. They define it very narrowly.

8 MR. CARRIGAN: It is virtually
9 impossible in the construction industry.

10 MR. POLLOCK: You can do it in the
11 construction industry too.

12 MR. CARRIGAN: In some of them.
13 Maybe in some of the narrow areas of the building
14 itself, but when you get into projection areas
15 there is always that comes in and this
16 take any pretext whatsoever, if someone wants
17 to use a fulcrum on a weak employer and it is
18 exploded to its maximum.

19 MR. POLLOCK: If you give everyone
20 this opportunity at this conference, this sounding
21 board type, where it is discussed and argued out,
22 and the merits and the pros and cons are all hashed
23 out and decisions are made at that stage, then
24 at least the employer can say, "Well, all right,
25 I am abiding by this thing" and you have the force
26 of law behind it and he knows what he is going to do.
27 And if it doesn't make any difference to him who
28 does the job, then he would be very happy.

29 MR. CARRIGAN: But the exception
30 comes to light the very following day when that business

1 agent, or frequently a business representative, not
2 the business manager, because they are looking for
3 political office, for political movements upwards
4 in their organization and they want to get
5 contentious items and to show themselves as being
6 vigorous in that sense of the word. And you will
7 get a man who, in concert with several other unions,
8 will make an agreement that is fair and proper but
9 he will then be looking for the loopholes and they
10 will show up the following day because there are
11 exceptions.

12 MR. POLLOCK: Then they will have
13 to reapply to this group as such.

14 MR. CARRIGAN: You can't do that
15 because decisions have to be made then and if
16 someone wants to stop work, he will find a reason
17 to stop the work.

18 THE COMMISSIONER: No doubt. The
19 question is, how are you going to impose upon him
20 a penalty, apart from imprisoning him, that would
21 be effective and suppose, I was wondering how these
22 unions, assuming that you have a right to sue a
23 union and get damages, are there any offsets that
24 could be satisfied?

25 MR. PAULIN: I have a brief argument
26 to direct to you, Mr. Commissioner, on that point,
27 in a moment.

28 MR. POLLOCK: I have one more question
29 of clarification on your agreements where a closed
30 shop type of job. Isn't that predicated that they

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1 will supply if they can or they won't supply, can
2 you then look elsewhere, whether it is practical
3 or not?

4 MR. CARRIGAN: And immediately
5 refer them to them and they will judge their
6 qualifications. There is a referral clause there.
7 In other words, if they can't supply, you are
8 entitled to go out after 48 hours and locate them.
9 But, having located them, they must become a member
10 of the union.

11 MR. PAULIN: I had one case, Mr.
12 Pollock, one or two summers ago, where an employer
13 could not get skilled tradesmen of a particular
14 trade, or at least he was told there were none
15 available by the union office. And then he said -
16 now he was a Montreal-based employer - and he said,
17 "If I am able to get skilled tradesmen to get
18 travel cards from the local in Montreal, will you
19 give them work permits when they get here?". And he
20 was told perhaps they would and perhaps they wouldn't.
21 And there was obviously some undercurrent between
22 the parties which I was never really able to define.
23 But in the result, the employees or members of the
24 foreign local, as it is called, they were given work
25 permits in the home local. Many of them were told
26 that they could not work for this particular employer
27 and they were sent elsewhere.

28 MR. POLLOCK: Those restrictive
29 practices are not uncommon in the craft unions.

30 MR. PAULIN: They are not uncommon

1 in the craft unions at all, but at the same time,
2 some of these restrictive practices of the kind
3 that we have been just talking about, are just
4 plain malicious and for no other reason than being
5 malicious. We have occasionally a case where, for
6 one reason or another, a business agent of a local
7 union becomes annoyed at a certain employer, who
8 is perhaps a small employer on a job, and he will
9 see to it, and deliberately see to it, as far as
10 he can, that the employer will be ruined. Perhaps
11 to teach him a lesson or perhaps to settle a feud.

12 MR. POLLOCK: The old aphorism about
13 power.

14 MR. PAULIN: One has to walk on
15 eggs just to some extent. Now, unlawful strikes
16 also occur, of course, over more things than the
17 jurisdictional disputes. There may be some question
18 of the interpretation of a clause in a collective
19 agreement between parties, perhaps a clause dealing
20 with the amount of payment of travel pay and to
21 the construction project.

22 MR. POLLOCK: Have you finished
23 jurisdictional disputes, now?

24 MR. PAULIN: Yes, I hope so.

25 MR. POLLOCK: Now the only point is,
26 I want to know what your suggestion is that you are
27 making. As I understand it, the tribunal ought to
28 decide this issue. They ought to have enforcement
29 power.

30 MR. PAULIN: They ought to decide who

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1 ought to have enforcement powers.

2 MR. POLLOCK: And to be granted to
3 tell these people, suggesting that they are going
4 to go somewhere else. "Now, you can't go somewhere
5 else, you must work on this project."

6 MR. PAULIN: No, we are not saying
7 that, sir, we are not saying that. We are just
8 saying what we would like to do, would be to give the
9 new section 66 a fair try without sub-section 8.
10 That's all we are saying.

11 THE COMMISSIONER: And what are you
12 suggesting as the means of enforcing a duty of that
13 sort. That is the difficulty arising in all of
14 these matters.

15 MR. PAULIN: Well, this piece of
16 legislation doesn't say how it is to be done.

17 THE COMMISSIONER: That may be, but
18 I am asking you...

19 MR. PAULIN: The legislature, sir,
20 has taken the responsibility for enforcement and
21 put it into the hands of the court. Where the
22 legislature doesn't quite know how to deal with
23 something or doesn't want to, for one reason or
24 another, they frequently leave it to the court and
25 the processes of the court are then resorted to
26 for some means of enforcing the particular provision.

27 THE COMMISSIONER: You mean to say
28 you leave it blank now, you leave it to the court?

29 MR. PAULIN: Well, the legislature
30 is left to the court, sir. The legislature has left

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1 it to the court.

2 THE COMMISSIONER: Well, it hasn't
3 expressly done so.

4 MR. PAULIN: I submit that they have.

5 THE COMMISSIONER: You mean in the
6 violation of the provision of the statute?

7 MR. PAULIN: Not in the violation
8 of the provision of the statute, no, but for the
9 enforcement of the provision of the Labour Relations
10 Board or the arbitration board.

11 MR. POLLOCK: The award is filed with
12 the court and after so many days it may be appealed

13 THE COMMISSIONER: I know, but when
14 you get it there, how are you going to enforce it?
15 What punishment? What means? I asked you before,
16 is it a question of damages or is it a question of -
17 now just let me finish for a moment - is it a question
18 of damages to claim, say, can you incorporate that
19 into the agreement and they violated the agreement
20 because the actual, the specific difficulty has been
21 determined, or are you going to treat it as a contempt
22 of an order of court?

23 MR. PAULIN: I think the only way
24 it can be treated under the court's procedure is
25 a contempt matter. I have resisted a motion to
26 commit the directors or company to trial for
27 contempt of court for failing to reinstate an
28 employee in the courts with the Labour Relations
29 Board under section 64 of the Labour Relations Act.
30 I have not yet had occasion to attempt to enforce an

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1 order of the Board or an arbitration board, say
2 against a trade union. I have never had a case
3 of that kind.

4 THE COMMISSIONER: Against what?

5 MR. PAULIN: Against a trade union.
6 I should think that the same process would apply.

7 THE COMMISSIONER: Well, then, all
8 you ask here is that sub-section 8 be eliminated?

9 MR. PAULIN: That is all we are
10 asking, sir. We would like to take the chances
11 with the section as it is now written. It is
12 very unfair now to ask the government and the
13 legislature to change a piece of legislature around
14 here before it has even had a chance to be tried
15 out because this was only passed last year.

16 Now, I have suggested to you, Mr.
17 Commissioner that unlawful strikes occur during the
18 course of the length of agreement over matters other
19 than jurisdictional disputes, for example, the
20 case of a dispute over the interpretation of some
21 clause in the collective agreement respecting a
22 rate of pay or travel pay to and from the project,
23 and some years ago, I suppose quite a number, perhaps,
24 it was almost the traditional practice in the
25 construction industry, to have a work stoppage rather
26 than resort to the grievance and arbitration procedures
27 because there weren't that many large projects which
28 went on for sometimes months and sometimes years
29 in their completion. This is still a device that
30 is used and even, in some cases, the local union may

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1 call a strike of its employees on the project just
2 for more money during the term of the collective
3 agreement and an employer in this industry is
4 foolish if he submits to what I think can be fairly
5 described as an industrial blackmail because, if
6 he submits once that he will be harassed by
7 repeated unlawful strikes as a means of settling
8 future disputes which arise under the collective
9 agreement and this has been a pattern in this
10 industry and, as I say, in view of the size of
11 projects and in view of the financial responsibility
12 of the large construction companies and what is
13 really the recent advent, I suppose, in the history
14 of this law of the compulsory arbitration of contract
15 disputes. I think this may be a trend which is
16 turning this way, at least I hope it is. And then
17 when a thing like this happens, where there is an
18 unlawful strike or a work stoppage of some kind,
19 contractors will frequently appeal to officers of
20 the international union about the illegal conduct
21 of the officers of a local union and the international's
22 officers usually cooperate, at least to the extent
23 of sending a telegram to the local business agent
24 or to the president of the local union directing
25 that he take certain action or that he cease certain
26 conduct and these directions are frequently ignored
27 and when the contractor informs the international
28 officer of the fact that they are ignored, he is
29 often told that the international union has, really
30 no control over the local at all. And we, I think,

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1 go to two extremes in the type of international
2 officer one finds to deal with. There is the case
3 of the international officer, and these are persons,
4 actual persons, who will send a telegram to the
5 business agent of a local to tell him to stop
6 doing something and when he is informed of the fact
7 that the telegram has been ignored, he sends another
8 telegram saying that he is arriving on a certain
9 flight at a certain time and he wants to be met
10 at the airport and by the time he gets there, of
11 course, this unlawful conduct has stopped. There
12 is the other type of international officer who
13 will be informed of a dispute between an employer
14 and may not go to British Columbia at all.

15
16 That type of international officer tends to go to
17 the place where there is the least trouble so there
18 are the two types and, of course, there are
19 gradations between those extreme.

20 But when the international says to
21 an employer that really he has no control over its
22 local, it is something, I submit, like a corporation
23 saying it has no control over its agent, or no control
24 over one of its divisions of one of its branches.

25 THE COMMISSIONER: Does it disclose
26 the terms under which a federation is affected?

27 MR. PAULIN: This, of course, is
28 found in the charter.

29 THE COMMISSIONER: Well, are those
30 available to you?

1 MR. PAULIN: No, they are not, sir.

2 Copies of them are filed with the Labour Relations
3 Board and the constitutions of the international
4 unions are more or less available and whatever
5 is found in the constitution, is affected in the
6 charter.

7 THE COMMISSIONER: From that you
8 can obtain the terms from which that affiliation
9 is brought about.

10 MR. PAULIN: I don't know whether
11 that is truly an affiliation. There are two views
12 on this matter. In discussing it in Professor
13 Carruther's book on collective bargaining law, he
14 says that there is the breath of life doctrine
15 where the parent union breathes life into the local
16 by issuing the charter and Professor Carruthers
17 disapproves of that and says it is really a matter
18 of the law of contract between the members.

19 THE COMMISSIONER: Well, what I am
20 concerned with is the terms of those breathes, or
21 whatever you may call them. Perhaps if we get
22 more closely to them, we get rid of these metaphors.

23 MR. PAULIN: Well, we find those, sir.
24 The terms that appear in the charter of a local union
25 are found in the constitution of the parent union.

26 THE COMMISSIONER: Yes. Suppose
27 there is a strike in Canada. Now is it the practice
28 that the headquarters in the United States will
29 contribute to strike benefits? If they do, under
30 what conditions or terms?

1 MR. PAULIN: Well, under the terms
2 of the constitution.

3 THE COMMISSIONER: Well, then that
4 is set forth.

5 MR. PAULIN: That is set forth.

6 THE COMMISSIONER: Well, then, it
7 would refer to these locals, say, in Canada?

8 MR. PAULIN: Yes.

9 THE COMMISSIONER: And the relation
10 would be specified?

11 MR. PAULIN: The terms of most of
12 the charters which are given by parent unions,
13 require the members of a local to adhere to and to
14 follow the constitution of the parent unions.

15 THE COMMISSIONER: Well, that's what
16 I mean. There is in writing and specification
17 language that in any case a relation that is thereby
18 established.

19 MR. PAULIN: Yes.

20 THE COMMISSIONER: I see.

21 MR. POLLOCK: They would have, in
22 most cases, power to put the whole local under
23 trusteeship?

24 MR. PAULIN: They have. They have
25 power even to revoke this charter in certain
26 circumstances.

27 THE COMMISSIONER: They issue the
28 charter?

29 MR. PAULIN: They issue the charter.

30 THE COMMISSIONER: I see.

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1 MR. POLLOCK: This revoking of the
2 charter is depending how the members of the union -
3 it might not solve your problem.

4 MR. PAULIN: It may not, indeed.
5 That is not the solution I was going to suggest,
6 however.

7 MR. POLLOCK: But you are advocating,
8 from what you have said so far, that more positive
9 control of locals by internationals.

10 MR. PAULIN: Yes.

11 THE COMMISSIONER: By the international
12 or by the authorities in Ontario?

13 MR. PAULIN: No, sir, by the parent
14 union.

15 THE COMMISSIONER: Do you think that
16 the elimination of sub-section 8 will bring that about?

17 MR. PAULIN: No, sir, I do not. We
18 are now, I think perhaps, talking about another
19 matter where, for example, a case of a strike which
20 is unlawful may be caused, and frequently, by
21 something other than a jurisdictional disputes.

22 THE COMMISSIONER: Then you are
23 making a distinction.

24 MR. PAULIN: Yes, I am. I think
25 the distinction perhaps, might only be in order
26 to point it up although I should think that this
27 would be an alternate way of perhaps handling
28 jurisdictional disputes. Now, I gave you two
29 examples of the conduct which one might find of
30 the international officers. I know of another case

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1 where a large contractor had what is called a
2 national agreement in Canada. In other words, they
3 had signed an agreement with the international
4 officers of the union in Canada covering the whole
5 country and at one project in a remote area of
6 Ontario, a local of one of these unions went up to
7 the Labour Relations Board and applied for certifi-
8 cation and the employer didn't take that too
9 seriously because he thought that he had a contract
10 with an international union which covered all of
11 Canada and the Labour Relations Board, in its wisdom,
12 certified the local union as a bargaining agent.
13 The local union very quickly got itself into a
14 strike position and picketed this vast project with
15 the resulting, colossal damages probably of around,
16 I understand the total damages in that project
17 amounted to around something like \$100 thousand a
18 day, which was the fixed job overhead, and there
19 was really nothing that they could do because they
20 were in a lawful strike position.

21 THE COMMISSIONER: What were the issues?

22 MR. PAULIN: Well, the issues, I
23 understand, although I was not engaged in this case,
24 the issues were that the local business agent wanted
25 to ensure that - he was bargaining another 60 cents
26 an hour for his members in spite of the - -
27 of the international, the existence of an international
28 agreement, he just wanted to improve the position.
29 So the Industrial Relations Vice-President of this
30 contractor, contacted the President of the union, the

1 international in the United States, on the telephone
2 and discussed the matter with him and he said that
3 he couldn't claim that the strike and the picketing
4 were unlawful because he had been advised by the
5 council that under the law of Ontario, they were
6 quite lawful. But he made the point that he
7 thought it was extremely unethical and the President
8 of the union in the United States agreed with him
9 and dispatched someone up to this remote area to
10 restore the situation and the strike was ended and
11 the picketing ceased.

12 MR. POLLOCK: Would you say that
13 international officers are generally more unethical
14 or more reasonable?

15 MR. PAULIN: I think one finds
16 officers in a corporation, as one goes up the ladder,
17 one tends to find the higher to the top you get,
18 usually, the more ability and reasonable one finds,
19 yes.

20 MR. POLLOCK: Of course, I suppose
21 the most current objection to that, in fact, is
22 the Toronto newspaper strike where everybody says
23 that they settled locally and the international
24 said they wouldn't.

25 MR. PAULIN: Oh, yes, there are
26 exceptions to every rule.

27 MR. POLLOCK: It is to determine
28 which is the rule and which is the exception, I
29 suppose.

30 MR. PAULIN: Yes, that sometimes is

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1 quite difficult.

2 THE COMMISSIONER: What would you
3 suggest that would make the officers in the United
4 States more responsive?

5 MR. PAULIN: I would suggest that
6 where the international has notice, actually has
7 notice given, of illegal conduct of the officers
8 of the local union and it does nothing about it,
9 then the international ought then to respond in
10 damages to the employer because the international
11 brings the local union into existence and I have
12 often thought, in trying to unravel the relationship
13 between an international or between a parent and
14 a local, as between a third person, as to whether
15 or not one could say that this was a relationship
16 with agency.

17 THE COMMISSIONER: Well, it is
18 involved in the question of this jurisdiction over
19 the international.

20 MR. PAULIN: Yes.

21 THE COMMISSIONER: In this country
22 have you any jurisdiction to sue the international
23 union?

24 MR. PAULIN: Yes, we do, sir.

25 THE COMMISSIONER: On what basis
26 of service?

27 MR. PAULIN: Right now, do you mean?
28 No, we do not here, because the rights of labour
29 action ---

30 MR. POLLOCK: Apart from that, the

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1 fact is it is not a jurisdictional problem.

2 MR. PAULIN: If you want to give -
3 if we assumed that a trade union that may be sued
4 as an entity, I think that there is cause of action
5 against the international and I base that on the
6 decision in the House of Lords some years ago where
7 a parent union was successfully sued because of
8 the wrongful acts of officers of what they called
9 a branch of that union and I believe that there
10 are very few reported cases on this point and I
11 don't know if they apply here because, in order,
12 I think, to understand the case thoroughly, one
13 would have to undergo a fairly extensive examination
14 of the structure of trade unions in England in 1900.

15 MR. POLLOCK: Are you referring to
16 Bonsore Musician's Union? —

17 MR. PAULIN: I may have found a
18 case that you don't know of.

19 MR. POLLOCK: It wouldn't require
20 a great deal of research.

21 MR. PAULIN: My partner, Mr. Winkler,
22 doesn't even know of this one. This is the case
23 of Denoby and Yorkshire Mining Association, which
24 is 1906 appeal cases.

25 THE COMMISSIONER: Yes.

26 MR. PAULIN: 384 Denoby and
27 Yorkshire Miners Association. If I may refer you, sir,
28 especially to pages 389 and 403.

29 THE COMMISSIONER: Of course, that
30 was all inside of England.

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1 MR. PAULIN: Yes, and may I also
2 refer you to one other decision. Denoboy is
3 against my proposition and this one is for it. The
4 case of Smithes.

5 THE COMMISSIONER: Yes.

6 MR. PAULIN: Versus National Union
7 of Operative Pasteurers.

8 THE COMMISSIONER: Yes.

9 MR. PAULIN: It is reported in 1909,
10 one King's Bench, 310, commencing especially at
11 page 326, that is the decision of the Court of Appeal.

12 THE COMMISSIONER: 326?

13 MR. PAULIN: 326.

14 THE COMMISSIONER: You've got the
15 House of Lords against you and the Court of Appeal
16 in your favour.

17 MR. PAULIN: Well, the Court of
18 Appeal extinguished the Danoboy case and they held
19 that if the central body has knowledge of this act
20 and does nothing about it, then the central, the
21 parent thing, may be liable.

22 MR. POLLOCK: That carries the
23 responsibility for torch, doesn't it?

24 MR. PAULIN: In a sense it was but
25 it was put on the basis of agency and the House
26 of Lords found no agency in the circumstances of
27 that particular case but indicated that there were
28 cases, however, there were circumstances where they
29 would have found liability.

30 THE COMMISSIONER: Well, you do

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1 postulate that there is authority in the international
2 union to act and a duty.

3 MR. PAULIN: A duty, sir, yes.

4 MR. POLLOCK: Well, in fact, in some
5 cases it is the international union that obtains
6 the certificate for the Labour Relations Board?

7 MR. PAULIN: Well, that is quite
8 true. Now, in my understanding of the procedure
9 of the Labour Relations Board, when an application
10 for certification is made by a local union, the
11 evidence of membership usually consists of membership
12 cards in the international and the Board will accept
13 the membership cards in the international as evidence
14 of membership in the local and the policy ---

15 THE COMMISSIONER: You can't call
16 that an application by the international union.

17 MR. PAULIN: No, sir, but this is
18 membership in the international as opposed to local.

19 THE COMMISSIONER: Yes, all I mean
20 is that if they did come here and make an application -
21 or you might easily say that they have to establish
22 that some agency in which service was based on
23 because they would have an immediate association
24 with the board, with the law.

25 MR. PAULIN: That is true, sir, but
26 the parent unions - the international unions -
27 maintain officers.

28 THE COMMISSIONER: Here in this
29 country?

30 MR. PAULIN: Oh, yes, indeed.

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1 THE COMMISSIONER: That might be
2 sufficient under the Adjudicature Act for service.

3 MR. PAULIN: Yes, I had thought that.
4 Now, of course, usually the classic case is that
5 10 or more members of a union may petition the union
6 for a charter in which to form a local and I can't
7 see that there has been any real examination of
8 this relationship as one of agency and, of course,
9 to be an agency there must be a third person but
10 I have not been able to find any examination of
11 this particular point. Now, what really happens, I
12 submit, is that the international brings their local
13 into existence by issuing it a charter and the
14 real purpose is to have the local carry on the
15 operations of the international in a particular
16 geographic area and a parent union thus relieves
17 itself of, I suppose, an enormous amount of
18 administrative detail and yet, it still receives
19 a substantial revenue from the locals in the form
20 of a portion of the monthly union dues.

21 THE COMMISSIONER: Take the railway
22 union, say the conductors of trains, the drivers,
23 firemen. Aren't they all members of the international
24 union, or local unions as well?

25 MR. PAULIN: I am not sure of the
26 railway industry here, but the tendency is to have
27 a membership in the international because of the
28 policy of the Labour Relations Board to grant charters
29 to, or to certify locals which have been chartered
30 by an international.

1 THE COMMISSIONER: I am just wondering,
2 maybe they follow the same course, but I know that
3 they generally, almost invariably, are spoken of
4 as the international order.

5 MR. PAULIN: Yes.

6 THE COMMISSIONER: The International
7 Brotherhood.

8 MR. PAULIN: The International
9 Brotherhood. I am not that familiar with the
10 railway industry, sir.

11 MR. POLLOCK: I think the general
12 comment is that on joining a union you become a
13 member of the international.

14 MR. PAULIN: The international.

15 MR. POLLOCK: Yes, and you swear
16 allegiance to your international.

17 THE COMMISSIONER: We will have a
18 short recess.

19 ---Short recess.

20 MR. PAULIN: If I may refer you,
21 while I am waiting for the other members to arrive,
22 sir, at page 16 of this brief.

23 THE COMMISSIONER: Yes.

24 MR. PAULIN: Around about paragraph
25 5, talking about the National Joint Board, and
26 this is something which is quite recent, December
27 of last year, it is about the fourth or fifth
28 paragraph down:

29 "As recently as December 2nd, 1966,

30

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the Chairman of the National Joint Board for Settlement of Jurisdictional Disputes in the Building and Construction Industry in Washington, wrote to the General Manager of the Canadian Construction Association in Ottawa, a sister organization of the Federation, as follows:

'In reply to your letter of November 30th, 1966, there is noted below an excerpt from the minutes of the National Joint Board meeting of August 30th, 1966:

'The Joint Board also voted to decline to accept any jurisdictional disputes cases involving local unions subject to Canadian Labour legislation unless there is an agreement by all directly affected parties to submit the dispute to the National Joint Board for decision and a stipulation by all such parties to accept and abide by its decision.' ' "

And, notwithstanding this, we still do have the situation where a local agent may refuse to be bound by a decision of the National Joint Board.

Now, I think that this may have been

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1 prompted by the Chairman of the National Joint Board
2 in Washington, because of the fact that in
3 collective agreements in the United States and
4 under the Labour Relations law, at least, there is
5 no injunction against strikes during the course of
6 a collective agreement. But there is in the
7 collective agreement itself, what is known as a
8 "no-strike" pledge. It is a covenant which has
9 been very widely honoured and I assume that the
10 National Joint Board felt that this type of stipulation
11 by parties might perhaps be effective and, unfortunately,
12 have not been.

13 THE COMMISSIONER: Well, have any
14 of the contractors, when these questions were made,
15 notified the Board that they do not consent?

16 MR. PAULIN: I am not aware that
17 they have, sir. The contractors ---

18 THE COMMISSIONER: You see, all
19 parties must agree.

20 MR. PAULIN: The contractors really
21 dont care, sir. You see ---

22 THE COMMISSIONER: Well, I know but
23 if they have a tribunal here, why shouldn't they
24 say, "We are not going outside. Settle this in Canada
25 where we can deal with the matter"?

26 MR. PAULIN: The contractors would,
27 I think, without question, unanimously agree, eagerly,
28 to a situation of that sort because the contractor
29 in a jurisdictional dispute is really an innocent
30 party in most cases unless there is some assignment

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1 support an application for consent
2 to prosecute."

3 Now, this is one of the strongest condemnations in
4 a decision of the Labour Relations Board, that one
5 might find in a point like I have just mentioned
6 where you do have the unfortunate situation where
7 a local union has irresponsible officers and the
8 employer is entirely at their mercy.

9 THE COMMISSIONER: What is the date
10 of that?

11 MR. PAULIN: 1964, sir.

12 THE COMMISSIONER: December the 23rd,
13 is it?

14 MR. PAULIN: Yes, and the Labour
15 Relations Board file is set out.

16 THE COMMISSIONER: Yes, I see it now.

17 MR. PAULIN: And that was the finale
18 of a long series of difficulties at that project
19 and, incidentally, the finale from the contractor's
20 point of view, was that he lost all of the mechanical
21 work in this very large building - an enormous
22 building - and had no recourse whatever because the
23 local was insulted. This was also a case,
24 unfortunately, where the international union refused
25 to come in and clean up its own doorstep.

26 THE COMMISSIONER: He didn't contemplate
27 acting against the international?

28 MR. PAULIN: Well, at the time, sir,
29 of course, the Rights of Labour Act is in our way,
30 and secondly, I must confess that it didn't occur to

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1 a declaration upon the application of the contractor
2 that the strike in support of the jurisdictional
3 dispute was illegal and a declaration was ignored.
4 Approximately a month later, after the declaration
5 of unlawful strike was filed, the union made
6 application to the union regulations board to
7 prosecute the contractor under section 57 of the Act,
8 because it was alleged that the employer had
9 improperly and wrongfully assigned this work to
10 another union, knowing that it would cause these
11 people to engage in an unlawful strike. And at
12 the very last page of the document, there is an
13 excerpt from the decision of the Labour Relations
14 Board in dismissing this application. The Board's
15 file number is quoted there, and the Board said:

16 "None of the remedies available
17 to the applicant or its members
18 were sought prior to the outbreak
19 of any of the unlawful strikes.

20 The evidence of previous history of
21 unlawful strikes engaged in by the
22 applicant's members can only serve
23 to prove that their past conduct was
24 irresponsible in the circumstances.

25 While the irresponsible and unlawful
26 actions of the members of the applicant
27 in the past might lead one to anticipate
28 that they might continue in the future,
29 such actions cannot be relied upon
30 by the applicant or its members to

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1 of a work order with some question about contempt
2 in his mind. He knows that the consequences are
3 so great that any economic advantage he may get
4 from assigning a work order out of the custom and
5 practice in the industry, are so enormous that it
6 isn't worth it. I might say that, getting back
7 to this business of the relationship between a parent
8 union and a local, some actions of the officers or
9 the members of a union are treated very severely
10 under the constitution of the parent union as, for
11 example, crossing a picket line where there is a
12 strike in progress, whether it is a lawful strike
13 or an unlawful strike - and again I say, notwithstanding
14 section 58(a) of the Ontario Act, or refusing to
15 be taken out in settlement, for force of settlement
16 of a jurisdictional dispute, there are frequently
17 fines imposed where one takes legal proceedings
18 against an officer or members of the union, whether
19 against the union as an entity in jurisdictions
20 where that is allowed or against the individuals
21 themselves. Now, that is treated most severely
22 by the union officers under the constitution of a
23 union. It depends, I suppose.

24 THE COMMISSIONER: Yes, but wouldn't
25 they, in the same way, concede the primacy of
26 Canadian legislation?

27 MR. PAULIN: I think perhaps they
28 would, sir, but again, it depends, I suppose, whose
29 action might be good in a certain situation.

30 THE COMMISSIONER: Well, whether they

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1 will or not, it can be effected.

2 MR. PAULIN: It can.

3 THE COMMISSIONER: If we say you
4 must continue your work if you have agreed and
5 you can't strike without it and you can't stop a
6 picket line, that's the rule.

7 MR. PAULIN: Yes, sir, and again
8 it is a question of how the rule is to be enforced.

9 THE COMMISSIONER: Oh, yes, yes.

10 MR. PAULIN: Now, we are in unfortunate
11 situations where a local union happens to have
12 irresponsible officers and this happens. Every
13 employer in that local's geographical area, who
14 hires men in that trade, is in jeopardy at the hands
15 of these few people who control the destinies of
16 the local. I think in, perhaps one of the worst
17 cases I have encountered of this, is in the very
18 last two pages of the brief, where there has been
19 a work assignment.

20 MR. POLLOCK: That is in the Exhibits,
21 is it?

22 MR. PAULIN: Yes, the very last
23 two pages in the binder, pages 6 and 7, 10(c).
24 There had been four strikes during a short period
25 of time, all called by the same union, all at the
26 same project, all against the same contractor. The
27 last one had to do with improperly and wrongfully
28 assigning, it was alleged, the work of installing
29 some heavy equipment. Sometime before this proceeding
30 was commenced, the Labour Relations Board had issued

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1 me at the time although it might have been taken into
2 consideration.

3 THE COMMISSIONER: Well, that ban
4 against suing, does that extend to an organization
5 under a foreign law?

6 MR. PAULIN: No, the international,
7 again, maintain offices in Ontario.

8 THE COMMISSIONER: Yes, I know, that
9 is what I have in mind. Would the act apply to that?

10 MR. PAULIN: Yes, it would apply.

11 THE COMMISSIONER: It applies to
12 everything?

13 MR. PAULIN: It applies to everything.

14 MR. POLLOCK: The regulation would
15 seem to mean accommodation, whether temporary
16 or permanent, having among its objects the regulations
17 of its agents between employers and employees or
18 employees and employers.

19 MR. PAULIN: Yes, and the Labour
20 Relations Board regards membership in an international
21 as we have discussed earlier as sufficient membership
22 in a local.

23 THE COMMISSIONER: Well, take a
24 corporation suit against a corporation, or perhaps
25 not a suit against a corporation but dealing with
26 corporations, it may easily be that a division of
27 that course would be contemplated only against Canadian
28 or locally incorporated group.

29 MR. PAULIN: Well, it may be, but
30 there have been actions taken in Ontario, I believe,

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1 against, if I may use the expression, foreign
2 corporations, which have a provincial licence whether
3 American, Bohemian or whatever they are.

4 THE COMMISSIONER: Oh, yes, certainly,
5 subject to ordinary law.

6 MR. PAULIN: Subject to ordinary
7 law.

8 THE COMMISSIONER: If we had something
9 dealing with their powers, you wouldn't purport to
10 be foreign created corporation.

11 MR. PAULIN: I would think so, yes,
12 Otherwise ---

13 THE COMMISSIONER: I mean, they can
14 say you can't do that in this country, but that
15 isn't what they do. They say the charter or any
16 incorporating powers will not extend so far that
17 by terms they are limited to their own creation.

18 MR. PAULIN: That may well be, sir,
19 but then, again, in the case of a trade union, we
20 find that in the constitution of the international,
21 which it must file with the Labour Relations Board
22 if it is to apply for certification.

23 MR. POLLOCK: Of course, but this
24 doesn't mean they can't even employ the employer's
25 organization.

26 MR. PAULIN: They can't sue.

27 MR. POLLOCK: You've got some
28 protection in your law.

29 MR. PAULIN: We would be quite content
30 to vest ourselves of it.

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1 MR. POLLOCK: You will trade.

2 THE COMMISSIONER: I didn't get that
3 bit of quimby?

4 MR.PAULIN: Oh, Mr. Pollock pointed
5 out to me, sir, that under the Rights of Labour Act
6 one may not sue an employer or organization either.
7 We don't feel it necessary to have that protection.
8 Well, of course, the next recommendation is that
9 the section 3, sub-section 2 of the Rights of Labour
10 Act be repealed and I know that a good deal of
11 argument is directed to you already, sir, on that
12 point, by others. There is one facet of that as
13 to whether or not, if unions became liable to be
14 sued, as entities, whether or not it would be
15 necessary to retain the injunction. Now, in our
16 submission, it is utterly essential to the construction
17 industry that the injunction be retained as a
18 member. And if it were not, then employers would
19 be constantly subject to picketing in support of
20 jurisdictional disputes or as a device to force
21 settlement agreements we have talked about, or even,
22 in some cases, to get rid of an unpopular foreman.
23 And there are two instances in the brief where there
24 has been a strike just solely for the purpose of
25 getting rid of a foreman who was unpopular, or for
26 any one of a great variety of reasons which might
27 occur from a local union officer for a disgruntled
28 member. Now, there are frequently cases, as well,
29 where the officers of a union are quite unable to
30 control the membership in some circumstances and

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1 there is one case referred to in Appendix to the brief,
2 an incident where one steward on a large construction
3 program went out and organized all of the other
4 stewards from the other unions into a body which
5 they called The Council of Stewards and then, having
6 done that, they sought to interject themselves as
7 sort of a bargaining agent and their attention
8 appeared to be to replace the local union as a
9 bargaining agent and the local union had no control
10 whatever over these people and, as it happened,
11 there had been some proceedings taken in the court,
12 with respect to a work stoppage and the chap who
13 had organized this council of stewards had given
14 him, undertaking to the court, instead of having
15 an injunction order issued against him, that he
16 would not do certain things and there was a work
17 stoppage again arising out of the council of stewards
18 and an application was made by the employer to
19 commit this individual for contempt of court for
20 having dishonoured the undertaking that he had given
21 and the business agents of the local union took
22 the extraordinary step of giving evidence in support
23 of their application, which is most unusual in this
24 industry. In fact in any other industry.

25 THE COMMISSIONER: Just what, in
26 relation to this, to contracting work, is the position
27 of the steward? He can be a member of the union?

28 MR. PAULIN: Oh, yes, he must be.

29 THE COMMISSIONER: Well, you said
30 that the union had no control over them.

1

MR. PAULIN: That is right.

2

THE COMMISSIONER: Well, they have
over their membership.

4

MR. PAULIN: Well, they do, if they
wish to exercise it. But frequently one finds a
situation where there is a very strong play of
politics at the union level.

5

8

THE COMMISSIONER: Oh, yes, I just
took from your statement that they were outside of
the union altogether.

11

MR. PAULIN: Oh, no, sir, they were
inside the union, but they were trying almost to
disgrace the union.

14

MR. POLLOCK: They were unruly,
I suppose.

16

MR. PAULIN: They were unruly and
this particular individual had wanted to be elected
as a business agent to this union and had been
defeated and he was a very strong personality and
he really took the unions on, headon, and of course,
inevitably, he had to lose.

21

THE COMMISSIONER: What came out of it?
Did he continue as steward?

22

MR. PAULIN: He continued as steward,
yes, and I suppose he still is a steward and when
a contractor telephones a union office and asks for,
say, ten tradesmen in this particular trade in which
this man is, there is other consternation when he
shows up on the job because this individual is well
known in the construction industry because it is just

30

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1 a matter of time, usually, before there is a work
2 stoppage after he arrives.

3 THE COMMISSIONER: Well, what do you
4 concede his relation to be to the union, to the
5 employer?

6 MR. PAULIN: The steward's relation?

7 THE COMMISSIONER: Yes, there is
8 a double aspect.

9 MR. PAULIN: There is almost a
10 double standard set for stewards. They say stewards
11 owe a greater deal to his employer than he does to
12 other employees because he is able to influence
13 employees or members of this union and he has the
14 responsibility of assisting in the administration
15 of the collective agreement and there are quite
16 a number of situations for a person who, as the
17 chief steward, is an employee of the company but
18 he doesn't do any work in the sense that other
19 people in the bargaining unit do work. He gets
20 paid for his trade and his duty really consists
21 of administering the collective agreement between
22 the employer.

23 THE COMMISSIONER: He does nothing
24 at all in the way of, say, foremanship?

25 MR. PAULIN: No, nothing whatever,
26 unless ---

27 THE COMMISSIONER: Is he on duty and
28 have regular hours?

29 MR. PAULIN: Yes, he is, sir. This
30 is common and yet I should say it is not uncommon in

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1 a very large area.

2 THE COMMISSIONER: In some cases, the
3 steward does some kind of supervisory work?

4 MR. CARRIGAN: No, never.

5 THE COMMISSIONER: Well, then he
6 goes further. He does some of the real work,
7 whatever it is.

8 MR. PAULIN: Yes, he works at his
9 trade.

10 THE COMMISSIONER: Yes, I see now.
11 And he has no authority at all over any other
12 employee?

13 MR. PAULIN: Only under the union's
14 constitution because he is one of the officers.

15 THE COMMISSIONER: What about hearing
16 complaints, do they complain to him?

17 MR. PAULIN: They will do, and then
18 he will assist an employee with a grievance to
19 take the matter through the different steps of the
20 grievance procedure and if it is considered to be
21 a policy grievance of the union, then he will bring
22 the policy grievance forward himself.

23 THE COMMISSIONER: Then they make
24 all their complaints through him, do they?

25 MR. PAULIN: Through him.

26 MR. POLLOCK: And on a large job
27 there are a lot of grievances, that is where he
28 would spend most of his time.

29 MR. PAULIN: He would and some employees
30 facetiously say when some individual, when he shows

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1 up at a job they expect they will have a grievance
2 before lunchtime because there is not enough ice in
3 the drinking water bucket.

4 Now, Mr. Commissioner, the purpose
5 of the Federation in presenting this brief, is simply
6 to bring stability to the labour force in the
7 construction industry. We have made very few
8 recommendations. We have made four, altogether.
9 We think that there has been an abuse of the
10 extraordinary economic power which has come into the
11 hands of local unions in this industry and the
12 four recommendations contained in our brief are,
13 in our submission, the minimum steps which are
14 required to achieve some measure of stability.

15 Thank you, sir.

16 THE COMMISSIONER: Were all of
17 these - the substance of this submission - submitted
18 to Mr. Goldenberg?

19 MR. PAULIN: There is a reference in
20 the brief, sir, to recommendations which were made,
21 for example, these recommendations may not go so far
22 or may be framed in a different way as the
23 representations that were made to Mr. Goldenberg.

24 MR. POLLOCK: Cliff Adams I think.

25 MR. CARRIGAN: Yes, that is right.
26 Actually, Mr. Commissioner, we have taken - there is
27 a continuity in the past ten years, our Association
28 has made representation, through various channels.
29 One was through the Select Committee of the Legislature
30 which was investigating labour relations' matters.

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1 The next opportunity was to submit our representation
2 to the Goldenberg Commission. Rightly, or wrongly,
3 we believe that the Goldenberg Commission's primary
4 concern was in the unorganized section of the
5 industry, having to do with abuses of labour, under-
6 paying labour, abuses of all kinds, so that although
7 we wanted to make our particular points known to him -
8 and they were considered, I am sure - we are not
9 at all confident that his primary consideration
10 wasn't in the prevalence of violence in the industry
11 at that time, which was largely in the unorganized
12 segment of the industry. Our Associations are
13 primarily in the organized section and have problems
14 that, although are parallel, are quite a bit different.

15 THE COMMISSIONER: Well, he didn't
16 touch on any of these matters in his recommendations.

17 MR. CARRIGAN: Not essentially but
18 there were recommendations in changes to the Act
19 which were carried out. However, they did not, nor
20 did any of the recommendations of the Select Committee
21 essentially touch the grass roots problems that
22 we feel are pertinent to the industry, the unlawful
23 cessation of work.

24 MR. POLLOCK: I think, to be fair
25 to the Commission, these problems existed at a
26 time that Goldenberg sat and he was aware of them
27 and they were presented. He, on consideration,
28 chose not to make some recommendations in some areas
29 and chose to make other ones in others. These
30 issues were before him and his terms of reference were

1 extremely broad in relation to the construction
2 industry.

3 MR. PAULIN: May I make a move, Mr.
4 Pollock. Mr. Carrigan has pointed out that we are
5 dealing with this Federation, largely with what one
6 calls the heavy construction industry or the
7 organized construction industry where - organized
8 to the extent, I mean, that the employers in this
9 industry employ union labour as opposed to that
10 segment of the construction industry which employs
11 non-union labour, usually on small projects, perhaps
12 such as house construction. Now, even another
13 aspect of this industry, for example, in the
14 construction of apartment buildings, where one could
15 say that in some cases the industry is semi-organized
16 one may find an acute shortage of tradesmen in
17 certain unions who work in and only in residential
18 or office types of buildings, and I know of one case
19 where a contractor went to one of the unions and
20 said that he was a sub-contractor and he had been
21 awarded a contract and he asked if he could sign
22 the form of collective agreement that was currently
23 in use. The trade union told him, no. They
24 admitted that there was a shortage of tradesmen in
25 the Toronto area at the time because, in order to
26 assist the local union in New York, they had sent
27 down quite a number there where there was even a
28 more acute shortage. So this man had a job to do -
29 quite a lot of work in a substantial apartment
30 building, and then he went and hired a few non-union

1 tradesmen and the very union that had refused to
2 sign a collective agreement with him, caused the
3 job to be picketed with one man carrying a placard
4 which said non-union tradesmen, naming the trade,
5 working on this job with the result that eventually
6 they obtain an injunction to restrain this picketing
7 and were awarded costs. The result was that this
8 man could never get into collective bargaining
9 relationships with this union and was eventually
10 bankrupt. He was a small contractor and did not
11 have a lot of working capital. I think that there
12 is no doubt whatever that the union contributed
13 substantially to his bankruptcy.

14 So that there are perhaps three
15 sub-divisions of employers in this industry; those
16 with organized labour; those in the semi-organized
17 and those who are unorganized.

18 MR. POLLOCK: So in comparison
19 with the problems that Mr. Goldenberg was concerned
20 with in the unorganized areas, yours was of a lesser
21 degree?

22 MR. PAULIN: That is true.

23 MR. POLLOCK: Not less important,
24 but there were more problems, I think in 1961 when
25 the Commission was appointed. The bigger issues
26 were this unorganized exploitation.

27 MR. PAULIN: Unorganized as opposed
28 to the group that has presented this brief, yes.

29 MR. POLLOCK: I think that it devotes
30 about 7 or 8 pages to the question of jurisdictional

1 disputes and rights to the incidence.

2 MR. PAULIN: The organization of
3 jurisdictional disputes has changed quite a bit
4 since that was written.

5 MR. POLLOCK: Due to the fact that
6 more big buildings are being built.

7 MR. PAULIN: I would think so.

8 MR. POLLOCK: On the question of
9 the unique character of the construction industry,
10 it has been suggested and I think that is one factor,
11 that both the unions and the employers are in
12 agreement that there is some unique qualities to
13 the construction industry.

14 MR. PAULIN: Yes.

15 MR. POLLOCK: One of the points
16 of contention is the appropriateness of a grievance
17 procedure in the ordinary grievance procedures that
18 are set up in the collective agreement, take time
19 and time is not something that either the employer
20 or the union has much of on a construction project
21 unless it is the Toronto-Dominion Bank and it is
22 going to last for a long time.

23 What do you say to the criticism that,
24 by the time we get the grievance procedure rolling,
25 the job is completed or, at least a particular part
26 of the work that we are grieving about is done and
27 forever because when that's done, the job is over.
28 It is not like an industrial situation where the
29 process is completed daily.

30 MR. PAULIN: My answer to that is that

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1 the grievance procedure, which is contained in
2 collective agreements in the construction industry,
3 contains provisions dealing with a joint discussion
4 of the thing and this is, in my understanding of
5 the situation, this is a type of grievance procedure
6 which has more or less been insisted upon by the
7 trade unions and it tends to delay the submission
8 in dispute to arbitration, in case this were
9 impossible to settle a grievance by discussion.
10 But the whole theory behind it is a sort of a joint
11 consultation type of thing, to solve the issue.
12 If it were more streamlined, then I think the
13 grievance procedure could perhaps be exhausted or
14 complied with-in the space, perhaps, of 5 or 7 working
15 days and if the matter were then not disposed of,
16 then if the union wished to do so, it could go to
17 arbitration very quickly.

18 MR. POLLOCK: You would almost, in
19 some circumstances, require an on-site arbitrator
20 to make this decision quickly or ---

21 MR. PAULIN: No, I disagree with you
22 because I think this: That it is the employer who
23 really is charged with the prosecution of the work
24 and it is the employer who is management and management
25 exists to manage and the employer must make a
26 decision and if the decision is to be challenged,
27 then I think that it ought to be challenged in an
28 orderly way through the arbitration procedure, even
29 a streamlined one. Certainly, infinitely rather
30 than an unlawful strike.

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1 MR. POLLOCK: Well, no, I didn't
2 think my suggestion implied that. I said if you
3 had someone available on the same day that the
4 dispute came about, somebody mutually agreeable,
5 I suppose, or some official, knowing something about
6 construction problems, would come down and say, "I am
7 your arbitrator and what is your dispute on such
8 and such" and say to do A or B.

9 MR. PAULIN: Then you really have
10 conciliation rather than arbitration.

11 MR. POLLOCK: Well, it is binding.

12 MR. PAULIN: We are binding conciliation
13 then.

14 MR. POLLOCK: Well, the only
15 difference between conciliation and arbitration,
16 one is binding and one isn't.

17 MR. PAULIN: I think in a few cases
18 that might work, but on the other hand, I have known
19 of arbitration cases in the construction industry
20 which required the interpretation of a clause in
21 the collective agreement. It is necessary to
22 fair it out, the evidence of fast practice, it
23 may be very necessary as it was in one case to
24 establish the relationship between the owner and
25 the contractor to see whether to see whether or
26 not they were, in fact, principal and agent, as
27 it was found in one case, and some of this preparation
28 might take a week or two. I think that the criticism
29 of arbitration, the arbitration process in the
30 construction industry is fairly general in industry

1 as a whole.

2 MR. POLLOCK: Well, that is
3 devastating in effect.

4 THE COMMISSIONER: Is there much
5 complaint from the construction unions over this
6 particular feature?

7 MR. PAULIN: There is some complaint
8 here, but on the other hand companies who sign
9 collective agreements with organized sections of
10 the trade industry, are companies that are quite
11 substantial and the arbitration cases are usually
12 heard in the place where the dispute arose or
13 nearby, so that they are usually heard in an area
14 where the employee is at the time the case comes on.

15 THE COMMISSIONER: There is no
16 difficulty in obtaining a chairman?

17 MR. PAULIN: Well, this has been
18 aggravated, of course by recent amendments to the
19 Judges Act and I think that gap will be caught up.

20 THE COMMISSIONER: Well, about how
21 long, in this kind of work, would it take for the
22 settlement of a complaint?

23 MR. PAULIN: The arbitration?

24 THE COMMISSIONER: Yes. We are told
25 that some of these arbitrations are hanging over
26 for years.

27 MR. PAULIN: That is true, sir and
28 it is unfortunately true, but I have just last week --
29 and
30 an arbitration board chairman was selected,/found
that I could get the case on in a week.

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1 THE COMMISSIONER: Well, yes.

2 MR. PAULIN: Now the difficulty is
3 that, well, the board will reserve its decision and
4 just not issue one.

5 THE COMMISSIONER: Will any of these
6 last beyond the period of the construction?

7 MR. PAULIN: Some of them last for
8 years.

9 THE COMMISSIONER: Well are they
10 abandoned or are they pursued?

11 MR. PAULIN: Most of them are
12 abandoned and that is again the resulting bitterness
13 towards the arbitration procedure when this happens.
14 I know of one trade union executive last week
15 who flatly refused to agree to a certain person
16 who was chairman of the arbitration board because
17 he said, "I am still waiting and I have been waiting
18 for four years for a decision on one case and I
19 haven't got it yet."

20 THE COMMISSIONER: Would it be of
21 any benefit to require an award to come down within
22 a certain number of days after the hearing?

23 MR. PAULIN: Well, there is a
24 provision already, I believe, in section 34 under
25 the Labour Relations Act, subsection 6, which says:

26 "Where a difference has been submitted
27 to arbitration and a party complains
28 to the Minister that the arbitrator
29 has failed to render a decision within
30 a reasonable time, the Minister may

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1 issue whatever order he deems necessary
2 in the circumstances, to ensure that
3 a decision would be rendered in the
4 matter without further, undue delay."

5 I think that may be called or apply to soap section.

6 THE COMMISSIONER: There is a case
7 where you might ask for a mandatory order.

8 MR. PAULIN: One might, yes.

9 MR. POLLOCK: In many cases, particularly
10 in the construction area where you will have one
11 function of a union, for example, to be completed
12 within seven days, or two weeks, the ordinary
13 arbitration machinery just can't get unwound until
14 that occurs. When the job is over, then the whole
15 thing is really academic because it does have its
16 affect as a precedent over the next jobs.

17 MR. PAULIN: No, sir, I submit that
18 it is not academic. I know of one arbitration case
19 which was heard some three or four months after
20 the job ended and there were a number of grievances
21 that were heard before this particular arbitration
22 board and some of the grievances were dismissed
23 and one of them was allowed and the company, the
24 employer, was required to pay the employees some
25 money and he did so there was no difficulty.

26 MR. POLLOCK: There must have been
27 some money involved, I guess?

28 MR. PAULIN: Money involved, yes.

29 Well, it was a dispatch case and the individual
30 claimed that he ought to have been paid for all the

1 time he had lost from the date of his discharge to
2 the date the employer finished that work and in
3 the result, the board found a sum of money owing
4 to this employee and he was paid.

5 THE COMMISSIONER: I think the
6 jurisdiction in dispute isn't settled until long
7 afterwards. It doesn't stand as a precedent, does
8 it?

9 MR. PAULIN: No, it does not, sir.
10 It is most unfortunate when that occurs that the
11 Labour Relations Board, under the new section 66,
12 I understand, has a very speedy method of dealing
13 with jurisdictional disputes so they are brought
14 on within just a few days of the time that they
15 are brought to the Board's attention.

16 MR. POLLOCK: How do you handle
17 the problem of multi-unit picketing?

18 MR. PAULIN: This is what one might
19 call situs?

20 MR. POLLOCK: Situs picketing, yes.

21 MR. PAULIN: Well, I have changed
22 my views slightly on that. At one time I was of
23 the opinion that if a trade union, say, one trade
24 union among many, on a large project, got into
25 a lawful strike position and it was entitled to
26 picket the project peacefully, and of course, when
27 that happens, then the whole project shuts down
28 because the other people will not cross the picket
29 line and, of course, the damages can be, as I indicated
30 earlier, very substantial. There are some very large

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1 projects, there might be affected over here, as
2 much as \$80 or \$90 thousand a day.

3 MR. POLLOCK: But apart from the
4 advantages that can be summarized, so far as
5 legality is concerned, people that refused to cross
6 the picket lines are subject to their contractual
7 rights with their employer, entitled to make that
8 choice. They are not - in the construction site
9 picketing where you have two or three people - they
10 are not afraid of those people who are picketing. It
11 is more the respect of the so-called union ethic not
12 to cross picket lines. It keeps them out.

13 MR. PAULIN: That is right, even
14 though ---

15 MR. POLLOCK: And the employer of
16 the people who refuse to cross might have an action
17 against them, I suppose, on contract.

18 MR. PAULIN: Yes.

19 MR. POLLOCK: But it is not as
20 practical a remedy.

21 MR. PAULIN: No, it is not.

22 MR. POLLOCK: To prevent the cause
23 of it. They are infringing on these people's rights.

24 MR. PAULIN: In the economy today
25 and the restrictions in a construction industry,
26 there is no practical recourse for the employer
27 against the employees of the unions who are engaging
28 in an unlawful strike by refusing to cross the
29 picket lines. He can discharge them all, he can
30 file grievances causing damages against the unions or

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1 he may take proceedings in the courts against them.
2 But there is really, I suppose, no practical remedy
3 in most cases.

4 But to answer your other question
5 about situs picketing ---

6 MR. POLLOCK: Can I just finish
7 this first point, then?

8 MR. PAULIN: Yes.

9 MR. POLLOCK: It is just this. Would
10 there be any objection to - if you restricted these
11 people from picketing - to also restricting the
12 contractor against whom they are in unlawful strike,
13 from hiring or replacing them on the job?

14 MR. CARRIGAN: It isn't practical
15 in the organized areas. It would be completely
16 impractical. It isn't possible.

17 MR. POLLOCK: There is no objection?

18 MR. CARRIGAN: Except there are
19 cases, I would suggest, on the remote hinterlands
20 on a project basis, it would be impossible.

21 THE COMMISSIONER: What would be
22 impractical?

23 MR. CARRIGAN: In respect to
24 replacing them and there just would be no source.

25 THE COMMISSIONER: That is when you
26 have a strike of this particular kind of skilled
27 labour, that ends the work there, so far on that job.

28 MR. CARRIGAN: To all intensive
29 purposes, it is ended.

30 THE COMMISSIONER: Yes, but that

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1 doesn't stop the fact that it wouldn't abolish
2 picketing.

3 MR. PAULIN: No, I think if I under-
4 stood Mr. Pollock's question, if we did not have
5 picketing, and this perhaps is a preponderance, I
6 suppose of loss or convenience or however anyone
7 wants to put it. But if you had an unlawful
8 strike or a lawful strike, rather, and perhaps 100
9 out of 1500 employees or even 20 out of 1500 employees
10 in a particular trade, unlawfully withheld their
11 service, if there was no picketing, what would the
12 industry think of agreeing not to replace these
13 people with others during the term of the unlawful
14 strike?

15 MR. POLLOCK: Lawful strike.

16 MR. PAULIN: Lawful strike, I beg
17 your pardon. Well, in this industry, generally
18 speaking, it is not practical to replace them anyway.

19 THE COMMISSIONER: Well, that's all
20 right, it doesn't injure them in any way.

21 MR. PAULIN: It injures us, but ---

22 THE COMMISSIONER: How does it injure
23 you?

24 MR. PAULIN: It does because the
25 people are applying economic pressures to us by
26 withholding their services by these 20 people, which
27 they are lawfully entitled to do.

28 THE COMMISSIONER: Yes, but I want
29 to get it clear. If you can't replace, there is
30 no difference to you whether you agree not to replace

1 or not.

2 MR. PAULIN: Not to try to, sir.

3 THE COMMISSIONER: Not to try to.

4 MR. PAULIN: I suggest to you, sir,
5 in some cases it is impossible.

6 THE COMMISSIONER: I know, but in
7 order to get rid of the picketing, would you agree
8 that in those seldom cases, where you can replace,
9 that you won't replace?

10 MR. PAULIN: Yes, I should think
11 that there should be no hesitation in the Federation
12 agreeing that if there was no picketing, we would
13 not try to replace the striking employees. So that
14 other aspects of employees at least could continue
15 and damages could be mitigated.

16 THE COMMISSIONER: And there would
17 be no fence there or barrier against other persons
18 from continuing, so far as they could continue.
19 This work might be vital to the continuance of the
20 whole.

21 MR. PAULIN: Yes, it might well be.

22 MR. POLLOCK: In these questions,
23 because of their nature, you probably haven't been
24 able to get instructions from your principals and
25 I want you to feel free that your comments may not
26 bind your principals.

27 MR. CARRIGAN: There are a couple
28 of exceptions to that.

29 MR. POLLOCK: That your principals
30 bind themselves?

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The road builders themselves
might find exceptions to that when they are only
partially organized in Northern Ontario, something
of that nature, so that the withdrawal of services
might be only, in effect, a partial withdrawal of
services. And they might enjoin from attempting
to replace those men who are already on their staff.

14 THE COMMISSIONER: Is what?

15 MR. CARRIGAN: Is not prevalent, and
16 in a legal strike they rarely put a picket on the
17 strike and it does not get done. That's it.

18 THE COMMISSIONER: And the work stops
19 as far as those men are concerned?

20 MR. CARRIGAN: The reason they don't
21 want to do that is because there are other unions
22 working on that site who don't want their work
23 interfered with.

24 THE COMMISSIONER: That would be one
25 reason for it, but it is not always the case.

THE COMMISSIONER: I see. / proceedings

1 you have to go from injunction.

2 MR. CARRIGAN: That's right.

3 THE COMMISSIONER: And then when
4 you get it you don't get it closing all picketing.
5 You get a limitation of pickets and what is that
6 on the other person?

7 MR. PAULIN: Sir, if I may answer
8 that question. If it is an unlawful strike, the
9 court will enjoin all picketing in support of it,
10 yes, in Ontario.

11 THE COMMISSIONER: Yes.

12 MR. POLLOCK: If you can still
13 remember the first question I asked, I don't remember
14 it now but you had an answer to it. Let's have your
15 answer.

16 MR. PAULIN: I think we were talking
17 about situs picketing. And I think I had answered
18 your question because we were talking about sort
19 of a preponderance, not of convenience, but perhaps
20 of circumstances and loss, economic loss, ought
21 to be weighed. I believe there was one case recently,
22 a reported case, where all picketing of a construction
23 project was enjoined although the strike was a
24 lawful one and I believe the judge in that case
25 put the matter on sort of a secondary boycott basis
26 and perhaps the order would not have gone if the
27 construction project had not been on a hospital.

28 MR. POLLOCK: The Robertson Yates
29 business.

30 THE COMMISSIONER: That wasn't taken

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1 to appeal or anything like that.

2 MR. PAULIN: There was an application
3 for leave to appeal but the application was refused.
4 I know of one other case of an unlawful strike where
5 all picketing was enjoined, but that was in two or
6 three stages up in the chain following some difficulty
7 down the line.

8 MR. POLLOCK: The only other question
9 I have is in relation to imposing responsibility
10 precarious responsibility, I suppose, on behalf
11 of union organizations for the action of its members.
12 I wonder what tests of liability you can apply. Are
13 you going to make it absolutely liable, or are you
14 going to take the tests that follow?

15 MR. PAULIN: No, I said that our
16 submission was based upon, after notice has been
17 given to the international officers of what had
18 happened and if they, within a reasonable time, do
19 not take any steps whatever to correct the situation,
20 or if they are unable to control it, or unable to
21 correct it, then I submit, in that situation, there
22 ought to be liability.

23 MR. POLLOCK: Even if they take the
24 steps to correct it, they are still liable.

25 MR. PAULIN: Yes, this is where a
26 parent is unable to control its local. I indicate
27 to you that there are certain situations where they
28 vigorously and forcefully control their people in
29 cases where there might be something done in which
30 the union considers it is an offence against unionism

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1 under the constitution and then they will be sharply
2 defined or expelled from membership. But, if they
3 have control in an area of that nature, then surely,
4 I submit that they have control in the other area
5 that I have been talking about, because there are
6 a number and certainly not all, but there are a
7 number of trade unions in our industry where the
8 parent union doesn't make the slightest attempt
9 to control its members so long as they are not
10 hurting the international.

11 MR. POLLOCK: You are on better
12 ground in that case. That's an easier judgment.

13 MR. PAULIN: That's an easier case
14 and that's the usual one.

15 MR. POLLOCK: But in the case where
16 they try, they notify them, they send them telegrams,
17 they send somebody here, they say, "Stop doing this".
18 Short of suspending anybody from the union, which
19 is probably the ultimate remedy that they have, you
20 would still put liability, unless they suspend them,
21 and then perhaps even after that?

22 MR. PAULIN: Yes, I would because
23 under most of these constitutions, well, when we
24 boil it down, what happens is a local union is
25 something which has been placed into existence by
26 the parent union and if you say that the parent union
27 then has no more responsibility whatever for the
28 actions of its local, then you are saying that a
29 trade union, in effect, has the power, by charter,
30 to create some other entity which it is not responsible

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1 for. Now only the legislature can do that.

2 MR. POLLOCK: No, you are saying
3 that it may be responsible.

4 MR. PAULIN: In law.

5 MR. POLLOCK: In law, but you are
6 not absolutely responsible.

7 MR. PAULIN: No, I am not saying
8 that they ought to be absolutely responsible.

9 MR. POLLOCK: If you try to
10 accomplish this task, meaningfully, if you try
11 to get them to change the attitude and go back to
12 work and resolve this thing and they refuse on a
13 misconceived notion of local economy, and you
14 can't persuade them, why would you make the
15 international liable in those circumstances?

16 MR. PAULIN: Well, the international,
17 again, as I say, has brought the local into existence.
18 And the international is in a position to say
19 that "We created this local union and it carries
20 on in our operations in a certain area and we
21 receive substantial revenue from it, represented
22 by a portion of the union dues and initiation fees
23 but at the same time, we have no responsibility
24 in law for its actions". Now, I think that that,
25 with all respect, is an absurd proposition because
26 I say, only the legislature can create corporate
27 entities. This is like saying that a corporation
28 can go ahead and issue its own charter to some
29 branch or division of it and then carry on operations
30 in such a way that it can never be responsible for

1 the actions of its own creature.

2 MR. POLLOCK: I'm not saying never.

3 I will agree with you on the part of, in some cases,
4 where they don't do anything or, in fact, where
5 they encourage this activity.

6 MR. PAULIN: Yes.

7 MR. POLLOCK: But when they do every-
8 thing that is reasonably possible for them to do,
9 short of arresting all these people and holding them
10 prisoner, I think they would probably satisfy even
11 the strongest of tests.

12 MR. PAULIN: If it is done bona fide,
13 and again we have the difficulty where frequently
14 in all industry, the situation will arise where an
15 unlawful strike may be in progress and the union
16 is appealed to by the employer and the employer is
17 told that the union can't control the membership at
18 all, and you know very well from what one sees,
19 although your knowledge may not be admissible in
20 evidence that this has been promoted and ordered
21 and brought about by their union officers, this says
22 you can't control the membership.

23 THE COMMISSIONER: Well, what you
24 really say is this: The parent organization is
25 liable for what the others do.

26 MR. PAULIN: Yes, sir.

27 THE COMMISSIONER: And there is no
28 way by which it can escape that.

29 MR. PAULIN: No, I am not saying that.
30 I will have to agree with Mr. Pollock when he says

1 that if the international officers do, in a bona fide
2 way, all that is reasonably within their power to
3 prevent the unlawful conduct, they are not successful.

4 THE COMMISSIONER: I thought your
5 answer to that was that it was absurd because it
6 had created this position.

7 MR. PAULIN: No, I was saying that,
8 as a general proposition, that they ought not to be
9 able to escape liability.

10 THE COMMISSIONER: Well, you create
11 the initial liability.

12 MR. PAULIN: The initial liability.

13 THE COMMISSIONER: Subject to them
14 being able to excuse themselves, they could recover,
15 theoretically at least, through their relation with
16 the subordinate union.

17 MR. PAULIN: Yes, they could. Now,
18 sir, I do want to emphasize one point which arises
19 out of this discussion, that it is not the purpose
20 of the employers of this industry to get at the
21 treasuries of the international unions for damages.
22 The purpose of the Federation, in making this
23 recommendation, is to find some way to bring more
24 stability to the conduct of the local union officers
25 and that is our biggest concern.

26 THE COMMISSIONER: Yes, but the
27 question still comes up, how are you going to bring
28 that about?

29 MR. PAULIN: Well, we think this is
30 one thing that would be of great assistance, that if we

1 knew if the officers of the international knew and
2 they did nothing, they condoned this action, that
3 the international might be liable for these actions
4 then the officers of the international would, I am
5 sure, exercise quite a bit more control over the
6 local union officials than they now do.

7 THE COMMISSIONER: Well, you could
8 make provisions for capturing the assessments, paid
9 by the local to the international.

10 MR. PAULIN: As a last resort.

11 THE COMMISSIONER: Oh, of course, yes.

12 MR. POLLOCK: So that the problem
13 if you put the control at the top, then you run
14 into the democracy of the union. If you put the
15 control at the union then you run into the problem
16 that we all face with democracy.

17 MR. PAULIN: Democracy is a smoke-
18 screen in this field.

19 THE COMMISSIONER: You don't have
20 to use that word here. I mean to impress the notion
21 that it strengthens any consideration.

22 MR. POLLOCK: I am speaking of the
23 control at the local level, the local economy versus
24 the machine economy that is the lack of economy. Is
25 it the leaders or the members that are supposed to
26 be the governing process of trade unions?

27 MR. PAULIN: Yes, that is quite so
28 and the local make it so far out of line that the
29 international lies it under trusteeship when the
30 international is being hurt. But when one talks about

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1 the democracy in trade unions, when it is talked
2 about the employers, is frequently, I submit a
3 smoke-screen for doing something which anyone wants
4 it to do.

5 THE COMMISSIONER: I would like to
6 get a definition of it first.

7 MR. PAULIN: Democracy, sir? I
8 don't know it.

9 MR. POLLOCK: I have no more questions.

10 THE COMMISSIONER: Well, I suppose
11 we all agree that the international relation is
12 one more or less embarrassing feature.

13 MR. PAULIN: Yes, I think perhaps
14 international is a misnomer, if it were called
15 a parent union.

16 THE COMMISSIONER: Oh, well, yes, well
17 really, you don't dilute it, you strengthen it. It
18 is not only the international but it is the parent.

19 MR. PAULIN: The English cases I
20 think referred to, is the parent because, of course,
21 the unions are all nationally ---

22 THE COMMISSIONER: They are all
23 nationals, yes. I suppose any question of policy
24 in relation to their international union becomes
25 actually a political question.

26 MR. PAULIN: Yes, it does and then
27 at the same time we have emerging on the scene in
28 Canada, a brand new force of the construction industry,
29 the C.N.T.U. The Confederation of National Trade
30 Unions, which had its beginnings in Quebec and

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1 is now, I believe, a bargaining agent for a number,
2 a small number of employees in the construction
3 industry in Ontario. And I understand that there
4 are some proceedings before the Labour Relations
5 Board which would even expand its representation.

6 THE COMMISSIONER: That isn't a bad
7 idea.

8 MR. PAULIN: That isn't a bad idea
9 at all, sir. I suggest we had better use the
10 word "parent" rather than international.

11 THE COMMISSIONER: I quite agree with
12 you. Because that tendency might go very far
13 in integrating the country.

14 MR. PAULIN: It might very well, indeed.

15 THE COMMISSIONER: Well, if that is
16 all, thank you very much.

17 MR. PAULIN: Thank you very much, sir.

18 THE COMMISSIONER: If anything further
19 occurs to you, why, I want you to feel at liberty
20 to draw it to our attention.

21 MR. PAULIN: Thank you very much, sir.

22
23 MR. POLLOCK: Mr. Cauchi, is that
24 the correct way of pronouncing it?

25 MR. CAUCHI: C-a-u-c-h-i, sir. My
26 name is Edward. I have my brother here, if you
27 don't mind. We belong to the same union. He was
28 authorized to sit with me today.

29 MR. POLLOCK: What is his name?

30 MR. CAUCHI: Gunther Lenardt.

1 MR. POLLOCK: Please sit down and
2 feel free to present the brief you have in any manner
3 you desire. I understand that you are presenting
4 this brief, Mr. Cauchi, on behalf of Local 346 of
5 the International Chemical Workers.

6 MR. CAUCHI: The International
7 Chemical Workers, right. Now, do you want me to
8 read this paragraph, by paragraph?

9 MR. POLLOCK: Suit yourself, you may
10 read it or talk about it in any manner you wish.

11 MR. CAUCHI: Well, I guess it would
12 save a lot of time since I have to rush back to
13 work.

14 We are not professional men and we
15 come from an industry. We are tradesmen and on
16 behalf of this local, I took it upon myself to
17 put in these proposals, which was ratified last
18 night at a general membership meeting and I have
19 the full support of the whole membership. Our
20 membership is 550.

21 We are in the stage of conciliation
22 right now. Our contract expired April 9th and
23 this is why it is very important in coming in today
24 and I think this might throw some light onto what
25 is going on in the labour movement.

26 We will deal with the first paragraph
27 which says in here that a number of strikes and
28 hours lost and this is going to be the year for
29 government to try to find a way to have labour peace
30 and also a year for top labour leaders in the trade

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1 union movement if it is to survive. So I say this;
2 this paragraph in here shows the Commission that
3 we are not in here to put the axe on management. We
4 don't want to put the axe on anybody. All we want
5 is peace. And when we say peace, we are not going
6 to come here and tell you that you should change
7 the laws and asking for changes in laws that management
8 should be cut down or labour should be put up. All
9 we want is a fair share. We do the work, they
10 make the money and we get paid for what we do. That
11 is all we want.

12 In the last 15 years I worked in the
13 same place and I always held an office in the union,
14 steward, bargaining officer, guide. The last two
15 years I was chief steward and the bargaining officer.
16 The year I am chairman of the grievance committee.
17 I have grievances that have been there for 16 months
18 waiting for an arbitrator. We put in 16 names
19 given to the company. "Choose a man. We will take
20 anybody". They won't agree with it. They will
21 say, "None of these are suitable enough for us".
22 So we have been going like this for 14 years. Finally
23 this year, we decided to do something which is law
24 in the Province of Ontario, that you have got to
25 apply to the Labour Board. But there is always a
26 way and there is an opening for a complaint. The
27 last two weeks we were supposed to sit with an
28 arbitrator appointed by the company, by the government.
29 The company had no choice. We have to agree and
30 have no choice. We were willing so the meeting was

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1 set for last week and conciliation date was for
2 last week too.

3 So we thought that it is better for
4 the whole membership to gain something on this
5 particular grievance, to gain something, we decided
6 to go with the idea of the company to postpone
7 the application case and carry on with conciliation
8 negotiations. This came about and the date had
9 to be reset again. It was reset for yesterday.
10 One of the company witnesses, so they say, happened
11 to be away, so the company asked us again to reconsider
12 it and let it go for another time. So we did. And
13 that is exactly what is aggravating the members
14 and that is why we want labour peace.

15 If the government, through legislation,
16 introduced some kind of arbitrator on the spot, if
17 a grievance in the industry, which is very similar
18 to the construction industry. We have men come
19 and go every day; if a man got a grievance today,
20 he would like to have it finished. We have guys
21 with men on the floor there, he was given 7 day's
22 suspension - lose weeks pay - by the time the
23 arbitration comes up, he quit. So what is he going
24 to do this time. He lost 7 day's pay. We still
25 would like to fight it but yet, in the meantime, we
26 say, "Well, what are we going to gain? Dispute with
27 the union? And will he quit his employment?". And
28 he is disgusted. You couldn't find him any more even
29 if you have to call him for a witness, and this is
30 exactly what the companies are looking for.

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I was told that the company is going to take us on and say, "How much money are we going to have to pay, because, as you gentlemen know, we have to pay half the cost even if we win the case".

THE COMMISSIONER: How many cases like that have taken place in the last ten years?

MR. CAUCHI: In the last ten years, well, sir, I would like to tell you about it. Unfortunately, I don't have the ---

THE COMMISSIONER: Just give me a ---

MR. CAUCHI: I could tell you the last year, it took 36 in one year.

THE COMMISSIONER: 36 men who were dismissed improperly, allegedly improperly dismissed?

MR. CAUCHI: Members?

THE COMMISSIONER: Yes.

MR. CAUCHI: No, no, no. Just one man was dismissed, as far as I can see.

THE COMMISSIONER: Only one man last year?

MR. CAUCHI: Only one man. In fact we had a wildcat strike on. In fact the company called him back. He was reinstated after arbitration, after three months, with full pay.

THE COMMISSIONER: So you had one dismissal and have you had suspensions?

MR. CAUCHI: Suspensions very often.

MR. POLLOCK: How many suspensions?

MR. CAUCHI: Three suspensions in the last year that I can remember.

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1 MR. POLLOCK: Three suspensions and
2 what are the other grievances?

3 MR. CAUCHI: The other grievances,
4 such as overtime and all break under the agreement
5 if we have an agreement in here.

6 MR. POLLOCK: Interpretation grievances?

7 MR. CAUCHI: Interpretation, right
8 and, well we won some and we lost some, but in this
9 book in here, we saw quite a few days and there is
10 an article in every one of them which deals ---

11 MR. POLLOCK: You are referring to
12 the collective agreement now?

13 MR. CAUCHI: That's right. The
14 collective agreement. You will find an article
15 in here and all articles argued for in 15 years
16 which has always been argued for, which is management
17 rights and that's why I say in my brief, I said that
18 one other law that should be introduced, that the
19 local unions should go on strike during the life
20 of the agreement. This can only be done for just
21 cause. Not if you don't like the foreman and you
22 walk out. This is for just cause with the government's
23 supervision. That is why I am happy to see the
24 last two weeks the government introduced something
25 which I hope, and I think it will, help the labour
26 movement and management too, because, as you know, sir,
27 then you ---

28 MR. POLLOCK: Labour management?

29 Mr. CAUCHI: Labour management
30 committee, which we needed for a long time. We are

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1 happy to know that is being done in other countries
2 and there is very little problem and I know about
3 them because I made it my business a long time ago
4 to read about labour laws and follow the labour rules,
5 managements and unions all over the world.

6 THE COMMISSIONER: Well, have you
7 proposed, have you made any propositions to your
8 company that such a committee should be formed?

9 MR. CAUCHI: We did, sir.

10 THE COMMISSIONER: It was rejected?

11 MR. CAUCHI: It was rejected. We
12 made propositions we were going to have a safety
13 committee, which was rejected. The last six months
14 the company saw fit to appoint a man from the union
15 to take 50 per cent of his time on safety only to
16 deal with safety. We have quite a few problems
17 in our kind of work and I find out this myself in
18 his report last night that a membership, there are a
19 few problems as you report them and report them again.
20 He had the power from the company to enforce foremen
21 to do the proper thing and he has the power to
22 inform the employee to do the proper thing. But
23 somebody above his head which is higher, to come
24 around and say, "We'll solve this because it is
25 costly". We had a case last week, a man was in
26 an accident because of a little spring that goes
27 up and down. This man got hit and it was recommended
28 to put a spring in there just to let down hoist.
29 The man was hurt. The safety man came in with
30 the foreman and quarrelled with the maintenance

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1 foreman. I am on maintenance, by the way, sir. And
2 the maintenance foreman, my foreman, he showed them
3 the slip that it was ordered but it was held up
4 by the superintendent because it is costly. Yet
5 the same day the man was hurt.

6 THE COMMISSIONER: He was hit?

7 MR. CAUCHI: He was hit on the head
8 and hurt. At the same time, the company has
9 appointed this man to see if they can improve safety
10 but we have no authority to go to arbitration here
11 because it is not in the agreement.

12 Another thing that I want to deal
13 with, sir, is that industrial relations in Ontario.
14 We have 15 years, I have been there. I have to
15 deal with 3 of them, one to replace the other, of course,
16 and one of them, the first one I had, we've got
17 grievance forms. The employee signed the grievance
18 forms giving us his complaint. The steward signs
19 his name to back him up after we find out for sure
20 that we do have a complaint. Then we give it to
21 the superintendent and the superintendent put it
22 in his report. Why this has been done or why the
23 company is right or why the foreman is right. The
24 third step is to give it to the Industrial Relations
25 man for his opinion. So we will give it to the
26 Industrial Relations man and he is supposed to get
27 it within three days. I could get it within two
28 minutes because this statement gives at the back
29 a step forward - I agree with the superintendent.
30 This is not only one. All these men, I don't want

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1 to blame just one industrial relations manager, because
2 if they go on the floor and try to solve the problem
3 themselves, they talk to a foreman and say, "Don't
4 do this again". I have been looking at these
5 grievances. It is the same thing all over again.
6 All I have to do is I have to agree with them,
7 making myself look like a fool. I think these
8 people don't have a face because I am sure that they
9 wouldn't agree with a form without looking at the
10 situation and calling the men over. But that's
11 all we look at, the back. I agree, I could show
12 you a book full of them from 1950. I agree with
13 the supervisor.

14 MR. POLLOCK: Have you had any of
15 them that succeeded. Where he doesn't agree with
16 the supervisor?

17 MR. CAUCHI: No, sir, not that I
18 can recall, sir. He called the supervisor, I know
19 and they will talk it over but his answer ---

20 THE COMMISSIONER: I thought you
21 said that you had won some of the grievances and
22 lost some of them?

23 MR. CAUCHI: Arbitration cases, at
24 the top, sir.

25 THE COMMISSIONER: Yes.

26 MR. CAUCHI: But not with the
27 Industrial Relations Manager.

28 MR. POLLOCK: You have never had
29 any grievance with management?

30 MR. CAUCHI: Grievance with management?

1 MR. LENARDT: If I may say something:

2 Now most grievances being settled at step number
3 one, which means that the employee and a shop
4 steward go into the foreman's office to discuss
5 the matter. Most of the time the foreman is wrong.
6 When the foreman is wrong, he will settle this
7 dispute by saying, "I'll correct this so and so" and
8 the second step, if the employee is not satisfied
9 with the decision made by the foreman, the second
10 step, he will go to the supervisor, the superintendent
11 and so on and so on. What my brother is trying to
12 say is, that in the cases themselves, when they go
13 up to the fifth or sixth step, that this is not
14 satisfactory.

15 THE COMMISSIONER: Well, when you
16 get to the point where you are in arbitration, do
17 you exhaust those?

18 MR. LENARDT: Yes, when everything
19 else is exhausted. When nothing else works, what
20 we do is, the last step is arbitration.

21 MR. CAUCHI: In fact, sir, some
22 of the arbitration cases that were pending two years
23 ago, I was on the bargaining committee and I also
24 was a chief steward. We know that there were clear
25 cut cases through lawyers and everybody else, through
26 labour heads, that they were won, they were in our
27 favour, but the company held an axe on our head. "You
28 drop those grievances. We'll sign the agreement.
29 You keep those grievances on the table, we don't
30 want to talk to you". This is the kind of language

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1 they used with us. What could you do? There is
2 no other way for unions. It is aggravating. It
3 is not only like I said in this second part. The
4 trade union militancy is being managed by union
5 membership. I saw a case 15 years ago when you
6 could go hold a little section meeting and everybody
7 sit down and listen to you because things were a
8 little bad. But today, people when they find out
9 that the last few years they say they get 5 cents
10 an hour raise and when they go to cash the cheque
11 to buy the groceries, they find out they are going
12 in the hole. They are not going to sit down and
13 take it anymore. When the company keeps putting
14 on the board how much profit they made last year.
15 This is aggravating as far as I can see and we
16 get the blame as leaders in the unions.

17 THE COMMISSIONER: Have you ever
18 had a strike there?

19 MR. CAUCHI: We had a strike a
20 year ago, two years ago, sir. It was two years
21 ago. We went out for three weeks and we are
22 taking a strike vote this Sunday. I will say this,
23 Your Honour, that we are very pleased to see that
24 there is no board of accommodation this year and
25 we can strike after this weekend.

26 MR. POLLOCK: No board
27 recommendations to take strike action?

28 MR. CAUCHI: There is no board
29 were
30 recommendation. The members / very pleased.
They were a little selective before.

1 THE COMMISSIONER: What happened
2 in the strike before? In the previous strike two
3 years ago? Did the plants close operations?

4 MR. CAUCHI: The plant, Your Honour,
5 that is what I say. Another paragraph in here, that
6 an injunction should be abolished. When we strike
7 in 65, we hardly had to put any pickets because
8 we are a union shop, 540 people. All day they just
9 sit down making coffee next door neighbour. The
10 office staff was in and out. We do not bother
11 them, they don't bother us. We had too few men on
12 the line because there were 550 members and all in
13 one local. I want to stress this, Your Honour.

14 THE COMMISSIONER: And they all
15 obeyed the strike call.

16 MR. CAUCHI: They all obeyed the
17 strike, they all obeyed the picket line, they all
18 obeyed the notice and I must stress this, sir, and
19 this is very important, not only the management
20 to some internationals too, because like I said,
21 I want peace and peace can come by coordinating
22 between management and labour.

23 THE COMMISSIONER: Well, what happened
24 in the strike, though?

25 MR. CAUCHI: The strike, we settled
26 it after three weeks, sir.

27 THE COMMISSIONER: Did they bring in
28 any other strike-breakers?

29 MR. CAUCHI: No, the company didn't
30 try. They threatened but they didn't try. We were

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1 threatened they would open and ship the pipe
2 out, building material business.

3 MR. POLLOCK: The chemical workers
4 are in the building material business? What kind
5 of business would transact pipe? Thermo-board
6 or thermo-glass?

7 MR. CAUCHI: Port Union, Ontario. My
8 plant is Johns-Manville. And I was saying on
9 injunction here, I would like to see the judge, sir,
10 gave or issued an injunction for small locals like
11 at that time. Issue the same injunction at the
12 same time with the same thinking to a place
13 like General Motors. I would like to see it.
14 I am sure that he wont have the heart to do it.
15 You think it over.

16 THE COMMISSIONER: Was there any
17 injunction issued in your case?

18 MR. CAUCHI: No, never. I am not
19 only speaking for myself, sir, but all my local union.
20 I am speaking for the small locals and I have it
21 at heart, the labour movement, and I don't want it
22 to go backwards. If I can, I would like to help
23 them as much as I can.

24 MR. POLLOCK: They have certainly
25 issued injunctions in locals larger than in Oshawa,
26 if that is your position.

27 MR. CAUCHI: There is only one that
28 I can recall, sir, and that is what I say, and
29 in one case, in our case, two years ago, I made it
30 clear sir, that there was only one international

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1 union involved.

2 THE COMMISSIONER: Yes.

3 MR. CAUCHI: In one international
4 involved, you have no problem, injunctions.

5 THE COMMISSIONER: They all go out?

6 MR. CAUCHI: Injunctions only
7 work at the Telegram and the Star where there are
8 so many internationals. Don't think for one minute
9 that I am in favour of too many locals belonging
10 to one union and work at the same place. That is not
11 togetherness. They don't call this brotherhood
12 and further down in here I said there is no reason
13 why a union has to wait for a conciliation board
14 report. We had 23 meetings so far. We started
15 negotiations 60 days before our contract expired
16 and 60 day, all we had, we had a brief of 42 items
17 presented to the company and from 42 items the
18 company saw fit to solve one item in 60 days. In
19 60 days they solved one item and the conciliation
20 report came in, they solved 10 items in one meeting.
21 The contract expired on April 9th.

22 MR. POLLOCK: April the 9th?

23 MR. CAUCHI: April the 9th and in
24 60 days they solved one item which is not monetary
25 either, right away. The last two weeks, they had
26 been negotiating yesterday, the day before and today
27 they went back again and this morning. Now they
28 talk about international unionism which you have to
29 listen to the people down south and tell you what
30 to do. In our case we don't have to listen to them.

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1 We make our own decisions. We pay our per capita.
2 We don't worry about it. We think it best because
3 that is democracy and I have a definition for
4 democracy. Give the majority the right to rule
5 and that's what we do. We don't get anybody from
6 down south, as they call them, or Washington; our
7 headquarters, by the way is in Akron, Ohio and we
8 don't listen to what they tell us, we just listen
9 to what is best for us and also it would be a lot
10 better place to work in Ontario if, as you gentlemen
11 know, a lot of these managers, they don't have a
12 say in here, they have to have word from either
13 Washington or New York.

14 Two years ago we went on strike for
15 3 weeks. We talked with the same manager for
16 years and years, for 15 years. Finally the word
17 came in from Cleveland that they have to give us
18 so much. Nor do we have to wait for somebody from
19 New York to wag his tail so we can go back to work
20 or this manager who is making a little money here
21 to run a place. I think the government should
22 interfere with this, should do something about it,
23 if we are to survive, talking about federal government
24 and provincial government, talking about Canada and
25 the Canadians, yet when it comes to labour, we
26 will have somebody else from down south to tell them
27 what to do and there is no reason that the law
28 and shape of arbitrations that has taken a lot of
29 time for hearings and reports. We had a hearing
30 a year ago that took about 7 months to get a report on it.

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1 I can't give you the answer why we waited so long.

2 To this day I don't know why, because it is nonsense.

3 All it is doing is aggravating the men on the floor

4 because if I worked on the floor with 100 people

5 and I am involved in this as well as anybody else

6 I am sure, like you say, somebody is going to pass

7 a law, you have to make decisions, you won't read

8 it the same as the others and if I am going to

9 be victimized because there is no report yet, I

10 am going to have to wait - - - I am sure

11 they will back you up. That's why I am sure when

12 this man was fired a year ago, it was exactly a

13 year ago, brother, right?

14 MR. LENARDT: Yes.

15 MR. CAUCHI: In March, 540 went

16 out for 24 hours and the company refused to talk

17 to them until they went back to work and by the

18 way, the international were over there and

19 so is the executive and the assistants because

20 they go back to work because that is not the way

21 to settle disputes. They sit down like human beings

22 at a table. We tried to be that way but not

23 management, there should be a law too, legislation

24 to legally go on strike.

25 Management won't co-operate because

26 this is a two-way street. The little guy who is

27 making \$5000, he is going out on strike and taking

28 a chance like we may have to do this year. You

29 take a chance whether you go back or not. You can

30 save too much money. You are taking a chance by this

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1 management has a chance to operate. There is no
2 reason in the world that anybody has common sense
3 to deal with one section and leave the other section
4 to flourish. In my estimation the law is very wrong
5 in here on the part of labour and this will stop
6 management from trying to bring in the scabs and
7 create disturbances. That's the only reason.

8 I saw picket lines in my time and
9 I never saw anybody arguing and fighting. The
10 only time I see them fighting and arguing is when
11 their bread and butter is running short and their
12 kids are getting hungry and somebody is going in
13 and taking their jobs. That's not right. We live
14 in a good country here and we hope that we, by our
15 work, and if we work together a little closer,
16 government and management, will make it a lot better
17 place to work in and to live.

18 Now the joining of 25 trade unions -
19 that was done in Peterborough, that came to quite
20 a shock to the labour movement and that's what I say,
21 these people were respected citizens of the community
22 and they were only protesting peacefully in a
23 democratic way that the employers are using to
24 break unions, I say this, because, Your Honour,
25 you saw it just as I did and we have another one
26 going in Oshawa today where the first agreement
27 is hard to get from this management. They seem
28 to do anything to prevent the place from being
29 organized. They try to do their best, even breaking
30 the law, by asking for their certification, by getting

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1 all kinds of signatures, by intimidation. They
2 proved it one time not long ago at the town of
3 Whitby. A bunch of truck drivers were intimidated
4 from joining a union. But, unless legislation is
5 passed, that if the union is organized, is certified,
6 the law says so, there should be a first agreement.
7 There shouldn't be a turning back for anybody from
8 management or for some scabs to sign another piece
9 of paper and say, "We don't want the union. We
10 were wrong the first time. We are either going
11 to be men or mice. You sign or you don't sign."
12 And they should be. We don't force anybody to
13 sign. We had that two years ago. Another local
14 tried to take over.

15 MR. POLLOCK: Another local of
16 your union?

17 MR. CAUCHI: Another international
18 tried to take over our local, yes, and there was
19 no panic. We tried to verify the facts and see
20 what was going on. In fact, I was the one that
21 was delegated from my union, I sold a few memberships
22 but everything was legal but what they failed
23 to do is tell us what the offer is, what are we
24 gaining. This is what labour wants to see. What
25 are you going to gain? There is no union that
26 wants to change another union or a union going out
27 on strike or a union wildcat or a union sitdown strike
28 or aggrevate management if they are not going to
29 gain anything. Where there is another union or
30 management. I deal with unions and leaders in the

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1 union movement just as I deal with management and
2 my executive I am proud to be the same as I am.

3 The same judge, say, that handed
4 down the sentence felt that if the law is bad, the
5 union should try to bring about a change. I don't
6 see any better way to come to you today, I won't
7 say begging, but stress that this law should be
8 changed because it is not in favour of the little
9 guy. It is very much in favour of the big unions,
10 the big unions tend to benefit from this because
11 I say the big unions, say the Steelworkers or
12 the U.A.W. workers, they could put in a picket line
13 of maybe a thousand or two and I have seen it
14 done in the Oshawa Times. But a union like the
15 Oshawa Times, if they have an injunction or in
16 Peterborough if they have an injunction, or we had
17 another one three years ago in Oshawa, the printers'
18 strike, an injunction issued on form members. Now,
19 is that justice? I don't think it is doing justice
20 to the small locals. That is why this law is very
21 much wrong and should be changed like it was stated
22 here by the same judge that passed the sentence in
23 Peterborough. Injunctions are very seldom used in
24 the United States and the public couldn't lose
25 respect for the courts because of the - -
26 the judges got direction from the union members and
27 I don't think that anybody has fun - in fact
28 myself I only went on the picket nine months because
29 I got sick and tired of walking the line. I don't
30 have any dependants so I decided to stay home and

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1 let somebody else make the money. If they can
2 afford to stay on the picket line, if they have
3 the patients, let them do it. They earn their
4 money because it is a very aggravating thing to
5 sit and walk that picket line. It is no fun, it
6 is no holiday to walk the street in the heat or in
7 the rain. I saw them at the Oshawa Times when the
8 snow was falling about six inches that day, walking
9 the picket line, a couple of ladies there. Now,
10 is that justice, sir?

11 One other law that should be
12 introduced is the local union and management should
13 sit down and talk 60 days before the agreement,
14 before the agreement expires and as long as the
15 agreement has not expired, they keep on talking.
16 But as soon as the agreement expiration date, the
17 union comes out. This is the way to speed negotiations.
18 We have always - I was talking to a couple of guys
19 this morning who were going to meet the company.
20 They were on my negotiation team, the bargaining
21 team. They tell you right off the bat, they are
22 sick of it dragging. The company talks to them
23 for a couple of hours and they say, "Well, that's it
24 for today. We meet again tomorrow", because they
25 know they have to sit for conciliation report, that
26 these men have to stay inside the plant working while
27 the company is still making money.

28 Another thing I would like to say
29 here is the long term agreements. You have two-
30 year agreements but most of them today are three-year

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1 agreements which in my thinking is freezing the
2 wages for three years. It is not right.

3 MR. POLLOCK: Why don't you sign
4 a one-year agreement?

5 MR. CAUCHI: The company won't go
6 for that, sir. They will tell you, we are not
7 going to sit down. I am glad you asked me, sir.
8 We asked for a one-year agreement, in fact we have
9 counsel, and one of our programs was a one-year
10 agreement and they said, "We are not going to sit
11 down here with you from January to January", so they
12 know they are not going to give you an agreement
13 before everything else is exhausted, they go to
14 the last minute and they will give you an
15 agreement. I sat down to four and five / the
16 manager to get an agreement downtown here two
17 years ago when the company knew damn well we were
18 going to walk out on the street the next day.
19 Before then the company wouldn't even look at us
20 for 60 days. All we get, like I say, is peanuts.

21 THE COMMISSIONER: Why don't you
22 go to the labour board, if they won't bargain that way,
23 not bargain properly?

24 MR. CAUCHI: Well, sir, we applied
25 to the Labour for a conciliation. This is not
26 only our local we are talking about but in our
27 case, our local applied for a conciliation officer
28 after six meetings, the appointment of a conciliator
29 came in about four weeks. The conciliator, when
30 he looked at the proposals and when he looked at the

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1 company offer he says, "You'd better go back to
2 the plant and see what you can get and come back
3 two weeks from today". We went back two weeks
4 after that day and the guy had to put his glasses
5 back on and clean it up because he saw the same
6 thing he saw two weeks before. The company
7 wouldn't move. The union wouldn't move because
8 the company knew that, well the union is not going
9 to give in, we are not going to give in because
10 we have got another two months in here. This guy
11 is going to take another two months before he
12 makes out a report. He sends it to the Minister
13 and the Minister looks at it and sends it back to
14 the conciliator, we send it back again and by
15 that time it would be wintertime. These guys
16 go on strike and freeze to death. This is not
17 only in our local, sir, this is in Ontario and the
18 whole province.

I belong to a few councils such as
this, the labour council, Toronto District Council,
Ontario Federation of Labour and I travel a lot
for my union and I know what is going on with other
locals problems. When we have a one-year agreement,
we run into a problem we did not have to wait 2 years
to solve it like I said but now most agreements
run for 3 years and something has to be done about
the problem as soon as it arises. We have a
grievance in fact, I have a letter in my valise sir,
that the management agreed that we only deal with one.
There were so many of the same, contains the same

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1 argument that the management saw fit that they would
2 pay everybody if we'd only set them aside, keep the
3 dates and everything else. That if the arbitrator
4 made judgment in our favour the company was willing
5 to pay everybody. We would keep track of how many
6 mistakes they were making. Now if that is not
7 nonsense, I would like to know what nonsense is.

8 The stewards in our place, I don't
9 know what they do sometimes. I had a gentleman
10 before me. The stewards are paid and don't do
11 any work. He could hardly get a steward in that
12 place because they are so busy. He is one of
13 the stewards right here. They are working all the
14 time and you go ask your supervisor before you go
15 and talk to your man. It is in our agreement,
16 we go along with it. We don't want people running
17 around all over the place.

18 THE COMMISSIONER: Well, your
19 complaint is pretty general. What you are really
20 complaining about is the delay.

21 MR. CAUCHI: The delay. This is
22 what aggravates people, sir, the members, the delay.

23 MR. LENARDT: Mr. Commissioner,
24 the only thing a worker has is a strike - management
25 can fire - what can the worker do? Nothing except
26 to strike. That is all that's left and if this
27 action is delay the moment of surprise is gone and
28 the strike sometimes is useless.

29 THE COMMISSIONER: Yes, there have
30 been other complaints of delay and going through

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1 this procedure and no doubt in some cases there
2 has been delay but there is also difficulty in
3 getting and obtaining arbitrators or members of
4 the board of conciliation. You can't pick them up
5 always. But your complaint ought to be made in
6 extreme cases to the Labour Board. That is the
7 institution that is set up to consider whether or
8 not an employer is acting in good faith or not.
9 You go to him and if he won't negotiate, if he
10 shows that he is indifferent in 60 days, you'll
11 have that, of course.

12 MR. CAUCHI: There wasn't many
13 judgement, Your Honour, sir, to go against management
14 on this. They proved it and they proved it year after
15 year and the government knows about it, it was their
16 purpose to delay negotiations, to delay arbitrations.

17 THE COMMISSIONER: I daresay, but
18 that is exactly what the Board is authorized to
19 deal with, a deliberate delay and a refusal to bargain
20 in good faith, that is with some degree of loyalty
21 to the purpose.

22 MR. CAUCHI: You are absolutely right
23 but by the time the company refuses to talk and
24 you apply to the board then you are snagged in there
25 again because one board goes to the other, there is
26 no clear cut centre on it. You apply for a
27 conciliator, like you said, sir, there is a shortage
28 of conciliators. I don't think there should be a
29 reason why there is a shortage of conciliators.

30 THE COMMISSIONER: That is a question

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1 we have to ---

2 MR. CAUCHI: I don't think there
3 should be a reason.

4 THE COMMISSIONER: That is a question
5 that has to be considered.

6 MR. CAUCHI: The little luck we
7 have here concerning hours of work and overtime,
8 we had cases, and this goes all over the province here
9 the labour law here tell you in one paragraph that
10 you are not obliged to work more than 8 hours a day.
11 But if you are asked by management or supervisor
12 to work, the law doesn't prevent the employer from
13 firing you. Now what kind of a law is that?

14 MR. POLLOCK: Well, if you are
15 talking about the hours of work and vacations
16 with pay Act, your interpretation of the Act is
17 incorrect.

18 MR. CAUCHI: Incorrect. That means
19 that if I work eight hours and I want to go home
20 and the management comes over and requests me to
21 stay over, I can't refuse.

22 MR. POLLOCK: You can refuse if
23 that's the only obligation you're under
24 but if you've got a collective agreement that says
25 you can work overtime, you work overtime in that
26 agreement.

27 MR. CAUCHI: There is no such
28 agreement.

29 MR. POLLOCK: You don't have any
30 overtime schedules in your collective agreement?

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1 MR. CAUCHI: Oh, yes, strictly
2 voluntary.

3 MR. LENARDT: Yes, strictly voluntary,
4 except working hours.

5 But the company can schedule us to work Saturday
6 for example, for time and a half, but at any other
7 time, I think, according to the contract, we can
8 refuse whatever is over 48 hours or 8 hours a day.

9 MR. POLLOCK: Well, you can refuse
10 under the contract and he can't fire you anyway.

11 MR. LENARDT: No.

12 MR. CAUCHI: Well, this happens. This
13 is why I am bringing this up, sir, because we had
14 a man, in fact he was a steward. He was doing a
15 job when four o'clock came and they told him to stay
day
16 over and the next / they gave him a warning ...

17 MR. POLLOCK: That range is a
18 bit far afield from the actual terms of this matter.
19 Have you got anything to add, Mr. Lenardt?

20 MR. LENARDT: The only thing I
21 should like to add here is that my brother Cauchi
22 was actually driving at was a change in legislation
23 to change application cases, two months, six months
24 a year and as I say, the said people have long
25 gone, not even work for the company any more and
26 the cases come up all of a sudden. The same thing
27 goes with strike. The only weapon we have is a
28 strike and as the time comes the company knows
29 about it they have enough time to get well informed
30 and that's it. In some of these strikes, well they

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1 are quite useless, some of them.

2 THE COMMISSIONER: Do you ever
3 engage a legal advisor?

4 MR. LENARDT: I, myself, do not
5 belong to the executive committee, but I am quite
6 sure that our executive committee at our local there,
7 does contact legal advisor.

8 MR. CAUCHI: I did, sir, legal
9 advise, members of the legislature - -
10 contacted members of the legislature

11
12 and they told me our agreement and all the agreements
13 in Ontario have an article there that shouldn't be
14 there which management rights..

15 THE COMMISSIONER: Thank you. You
16 are not the only people who have complained about
17 that.

18 MR. CAUCHI: I know that. In fact,
19 I hope I didn't waste my time because I had more
20 important, personal business to do this morning
21 but I selected to come here in front of you.

22 MR. POLLOCK: We are very obliged
23 for that, bringing up the points that you have made
24 today to our attention. We certainly think that
25 more people in your position at the local level
26 ought to take an active interest in these matters
27 as well as people at the international and national
28 levels. We are obliged to you both for appearing
29 before us.

30 MR. CAUCHI: Well, like I said, sir,

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1 I don't take the view that I am going here and I
2 am going to fight the company. My view, in my
3 mind when I have to have a beef, I study it myself
4 and if the company is wrong I sit down and talk
5 to them. If I have a beef with the international
6 I will do the same thing because nobody is going
7 to tell me what to do and that's what a democracy
8 is and that ought to come down to what my thinking is.
9 My thinking is right - if my thinking is wrong - well
10 I'll say I have to back up and that's what I always
11 do. Thank you, sir.

12 MR. LENARDT: Thank you very much.

13 MR. POLLOCK: The Commission is
14 adjourned until 10:00 o'clock tomorrow morning.

15 ---Adjournment

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